

IDAHO CODE

TITLES 39 (45-end) and 40

**HEALTH AND SAFETY to
HIGHWAYS AND BRIDGES**

Current through 2020 Regular Session

MICHIE

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GENERAL LAWS OF IDAHO
ANNOTATED

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Idaho Code Commission

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COMMISSIONERS

TITLES 39 (45-END), 40

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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.”

Section 67-510 Idaho Code provides: “No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.”

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936

1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952
1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971

1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997
1998	March 23, 1998
1999	March 19, 1999

2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014
2015	April 11, 2015
2015 (E.S.)	May 18, 2015
2016	March 25, 2016
2017	March 29, 2017
2018	March 28, 2018
2019	April 11, 2019
2020	March 20, 2020

**Title 39
HEALTH AND SAFETY**

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Chapter 45

THE MEDICAL CONSENT AND NATURAL DEATH ACT

Sec.

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§ 39-4501. Purposes — Application. — (1) The primary purposes of this chapter are:

(a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental, surgical and other health care, treatment or procedures, and concerning what constitutes an informed consent for such health care, treatment or procedures; and

(b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.

(2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3 or chapter 4, title 66, Idaho Code, as those provisions pertain to hospitalization or commitment of people with mental illness or developmental disability or the powers of guardians of developmentally disabled persons, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.

(3) Nothing in this chapter shall be construed to permit or require the provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

History.

I.C., § 39-4501, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 214, § 1, p. 645; am. 2007, ch. 196, § 1, p. 579; am. 2012, ch. 302, § 1, p. 825.

STATUTORY NOTES

Prior Laws.

Former § 39-4501, which comprised **I.C., § 39-4501**, as added by 1977, ch. 106, § 1, p. 228, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2006 amendment, by ch. 214, deleted “medical attendance upon or” preceding “hospitalization” in subsection (2).

The 2007 amendment, by ch. 196, inserted “or chapter 4” in subsection (2).

The 2012 amendment, by ch. 302, substituted “surgical and other health care” for “or surgical care” and substituted “for such health care” for “for such care” in paragraph (1)(a) and substituted “hospitalization or commitment of people with mental illness or developmental disability or the powers of guardians of developmentally disabled persons” for “hospitalization of the mentally ill” in subsection (2).

§ 39-4502. Definitions. — As used in this chapter:

(1) “Advanced practice professional nurse” (APPN) means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined by [section 54-1402, Idaho Code](#), and is authorized to perform advanced nursing practice, which may include direct client care such as assessing, diagnosing, planning and prescribing pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care as defined by rules of the board of nursing. The advanced practice professional nurse collaborates with other health professionals in providing health care.

(2) “Artificial life-sustaining procedure” means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which, when applied to a qualified patient, would serve only to artificially prolong life. “Artificial life-sustaining procedure” does not include the administration of pain management medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(3) “Artificial nutrition and hydration” means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.

(4) “Attending physician” means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(5) “Cardiopulmonary resuscitation” or “CPR” means measures to restore cardiac function and/or to support ventilation in the event of cardiac or respiratory arrest.

(6) “Comfort care” means treatment and care to provide comfort and cleanliness. “Comfort care” includes:

(a) Oral and body hygiene;

(b) Reasonable efforts to offer food and fluids orally;

(c) Medication, positioning, warmth, appropriate lighting and other measures to relieve pain and suffering; and

(d) Privacy and respect for the dignity and humanity of the patient.

(7) “Consent to care” includes refusal to consent to care and/or withdrawal of care.

(8) “Directive,” “advance directive” or “health care directive” means a document that substantially meets the requirements of [section 39-4510\(1\), Idaho Code](#), or is a “Physician Orders for Scope of Treatment” (POST) form or is another document which represents a competent person’s authentic expression of such person’s wishes concerning his or her health care.

(9) “Emergency medical services personnel” means personnel engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians and paramedics.

(10) “Health care provider” or “provider” means any person or entity licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency or other medical services personnel.

(11) “Persistent vegetative state” means an irreversible state that has been medically confirmed by a neurological specialist who is an expert in the examination of nonresponsive individuals in which the person has intact brain stem function but no higher cortical function and no awareness of self or environment.

(12) “Physician” means a person who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restriction upon or actions taken against his or her license.

(13) “Physician assistant” (PA) means any person, as defined in [section 54-1803, Idaho Code](#), who is qualified by specialized education, training, experience and personal character and who has been licensed by the board of medicine to render patient services under the direction of a supervising and alternate supervising physician.

(14) “Physician orders for scope of treatment (POST) form” means a form that satisfies the requirements of [section 39-4512A, Idaho Code](#).

(15) “Physician orders for scope of treatment (POST) identification device” means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the department of health and welfare. Such jewelry shall be issued only to persons who have a POST form complying with [section 39-4512A, Idaho Code](#), stating that such person has chosen “Do Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR): No CPR or advanced cardiac life support interventions” or the equivalent choice.

(16) “Surrogate decision maker” means the person authorized to consent to or refuse health care for another person as specified in [section 39-4504\(1\), Idaho Code](#).

(17) “Terminal condition” means an incurable or irreversible condition which, without the administration of life-sustaining procedures, will, in the opinion of a physician, result in death if it runs its usual course.

History.

[I.C., § 39-4502](#), as added by 2007, ch. 196, § 2, p. 579; am. 2012, ch. 302, § 2, p. 825.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Prior Laws.

Another former § 39-4502, which comprised [I.C., § 39-4502](#), as added by 1977, ch. 106, § 1, p. 228, am. 1986, ch. 71, § 1, p. 196; am. 1988, c. 262, § 1, p. 508, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2012 amendment, by ch. 302, added subsections (1), (13), and (16) and renumbered the subsequent subsections accordingly; in subsection (8), inserted “advance directive”, substituted “that substantially meets” for “meeting”, deleted “signed by a physician” following “form”, and added

the ending beginning “or is another document”; in subsection (14), substituted “means a form that satisfies the requirements of section 39-4512A” for “means a standardized form containing orders by a physician that states a person’s treatment wishes”; and added the second sentence in subsection (15).

Compiler’s Notes.

Former § 39-4502 was amended and redesignated as § 39-4503 by S.L. 2007, ch. 196, § 3.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-4503. Persons who may consent to their own care. — Any person, including one who is developmentally disabled and not a respondent as defined in [section 66-402, Idaho Code](#), who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite comprehension at the time of giving the consent.

History.

[I.C., § 39-4502](#), as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 3, p. 579; am. 2012, ch. 302, § 3, p. 825; am. 2017, ch. 273, § 1, p. 713.

STATUTORY NOTES

Prior Laws.

Another former § 39-4503, which comprised [I.C., § 39-4503](#), as added by 1977, ch. 106, § 1, p. 228; am. 1986, ch. 71, § 2, p. 196; am. 1988, ch. 262, § 2, p. 508; am. 2001, ch. 27, § 1, p. 32, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4502 and in the last sentence, twice substituted “health care provider” for “physician, dentist, hospital or other duly authorized person” and “physician or dentist,” respectively.

The 2012 amendment, by ch. 302, substituted “Any person who comprehends” for “Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend” near the beginning and substituted “surgical and other health care” for “or surgical care” near the

end of the first sentence and substituted “comprehension” for “intelligence and awareness” in the second sentence.

The 2017 amendment, by ch. 273, inserted “including one who is developmentally disabled and not a respondent as defined in [section 66-402, Idaho Code](#)” near the beginning of the first sentence.

Compiler’s Notes.

Former § 39-4503 was amended and redesignated as § 39-4504 by S.L. 2007, ch. 196, § 4.

§ 39-4504. Persons who may give consent to care for others. — (1) Consent for the furnishing of hospital, medical, dental, surgical or other health care, treatment or procedures to any person who is not then capable of giving such consent as provided in this chapter or who is a minor may be given or refused in the order of priority set forth hereafter; provided however, that the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care pursuant to the provisions of [section 39-4503, Idaho Code](#); and provided further that the surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives, POST or wishes expressed by such person while the person was capable of consenting to his or her own health care:

- (a) The court appointed guardian of such person;
- (b) The person named in another person's "Living Will and Durable Power of Attorney for Health Care" pursuant to [section 39-4510, Idaho Code](#), or a similar document authorized by this chapter if the conditions in such living will for authorizing the agent to act have been satisfied;
- (c) If married, the spouse of such person;
- (d) An adult child of such person;
- (e) A parent of such person;
- (f) The person named in a delegation of parental authority executed pursuant to [section 15-5-104, Idaho Code](#);
- (g) Any relative of such person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;
- (h) Any other competent individual representing himself or herself to be responsible for the health care of such person; or
- (i) If the person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental, surgical or other health care to such person and the person has not communicated and is unable to communicate his or her treatment wishes,

the attending health care provider may, in his or her discretion, authorize and/or provide such health care, as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.

(2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental, surgical or other health care, treatment or procedures to another person as provided by this chapter shall be subject to civil liability therefor.

(3) No health care provider who, in good faith, obtains consent from a person pursuant to either section 39-4503 or 39-4504(1), Idaho Code, shall be subject to civil liability therefor.

History.

I.C., § 39-4503, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 4, p. 579; am. 2012, ch. 302, § 4, p. 825.

STATUTORY NOTES

Prior Laws.

Another former § 39-4504, which comprised **I.C., § 39-4504**, as added by 1977, ch. 106, § 1, p. 228; am. 1986, ch. 71, § 3, p. 196, was repealed by S.L. 1988, ch. 262, § 3.

A former § 39-4504, which comprised **I.C., § 39-4504**, as added by 1988, ch. 262, § 4, p. 508; am. 2001, ch. 27, § 2, p. 32; am. 2004, ch. 56, § 1, p. 258, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4503 and in subsection (1)(g), inserted “and the subject person has not communicated and is unable to communicate his or her treatment wishes” near the middle; and in subsection (3), substituted “health care provider” for “physician, dentist, hospital or other duly authorized person,” and corrected the section references.

The 2012 amendment, by ch. 302, in subsection (1), rewrote the introductory paragraph, adding the two provisos; substituted “court appointed” for “legal” in paragraph (a), added “if the conditions in such living will for authorizing the agent to act have been satisfied” in paragraph (b), added paragraphs (d) and (f), redesignating the subsequent paragraphs, and substituted “health care provider” for “physician or dentist” twice in paragraph (i); and, in subsection (2), inserted “or other health” and substituted “to another person” for “to another.”

Compiler’s Notes.

Former § 39-4504 was amended and redesignated as § 39-4505 by S.L. 2007, ch. 196, § 5.

§ 39-4505. Blood testing. — (1) A physician may consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without the prior consent of the patient if:

(a) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and

(b) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent pursuant to [section 39-4504, Idaho Code](#).

(2) The department of health and welfare shall promulgate rules identifying the blood-transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

(3) Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results.

(4) Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested or by such person's authorized

representative, or as otherwise authorized by law, shall be guilty of a misdemeanor.

History.

I.C., § 39-4504, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 5, p. 579.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws.

Another former § 39-4505, which comprised I.C., § 39-4505, as added by 1988, ch. 262, § 5, p. 508; am. 2004, ch. 56, § 2, p. 258, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4504 and updated the section reference in subsection (1)(b).

Compiler's Notes.

Former § 39-4505 was amended and redesignated as § 39-4506 by S.L. 2007, ch. 196, § 6.

§ 39-4506. Sufficiency of consent. — Consent, or refusal to consent, for the furnishing of health care, treatment or procedures shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like health care provider of good standing practicing in the same community. As used in this section, the term “in the same community” refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

History.

I.C., § 39-4505, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 6, p. 579; am. 2012, ch. 302, § 5, p. 825.

STATUTORY NOTES

Prior Laws.

Another former § 39-4506, which comprised I.C., § 39-4505, as added by 1977, ch. 106, § 1, p. 228; am. and redesign. 1988, ch. 262, § 6, p. 508, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4505 and inserted “or refusal to consent” and “or refusing” near the beginning.

The 2012 amendment, by ch. 302, substituted “health care” for “hospital, medical, dental or surgical care” near the beginning of the first sentence and

substituted “health care provider” for “physician or dentist” twice in the second sentence.

Compiler’s Notes.

Former § 39-4506 was amended and redesignated as § 39-4507 by S.L. 2007, ch. 196, § 7.

CASE NOTES

Objective Medical-Community Standard.

There was insufficient evidence that a dentist failed to adequately inform a patient about a “silver crown” procedure. There was no evidence that a dentist in good standing, under the circumstances, would have apprised the patient of the obscure semantic distinction between a “crown” and an “amalgam buildup” or “amalgam crown.” *Peckham v. Idaho State Bd. of Dentistry*, 154 Idaho 846, 303 P.3d 205 (2013).

Decisions Under Prior Law

Analysis

Basis for claim.

Consent not established.

Defenses.

Nature of disclosure.

Objective medical-community standard.

Purpose.

Responsibility of hospital.

Basis for Claim.

To establish a claim based on the doctrine of informed consent, a patient must prove three basic elements: nondisclosure, causation and injury. In order to show causation, the patient must prove that, if he had been informed of the material risks, he would not have consented to the procedure, and that he had been injured as a result of submitting to the medical procedure. *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452

(1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Consent Not Established.

The verified affidavit of the defendant physician, in which he testified as to his familiarity with the applicable standard of health care and his compliance therewith, was held insufficient to establish consent and entitle him to judgment as a matter of law. *Rook v. Trout*, 113 Idaho 652, 747 P.2d 61 (1987), overruled on other grounds, *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452 (1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Defenses.

Those portions of *Rook v. Trout*, 113 Idaho 652, 747 P.2d 61 (1987), which held that this section merely provides alternative defenses to a claim of lack of informed consent, and which held that the statute provides for a subjective patient-based standard of disclosure for informed consent are overruled; this section sets forth and requires an objective medical-community standard for determining whether a patient has been adequately informed prior to giving consent for medical treatment. *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452 (1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Nature of Disclosure.

A valid consent must be preceded by the physician disclosing those pertinent facts to the patient so that he or she is sufficiently aware of the need for, the nature of, and the significant risks ordinarily involved in the treatment to be provided, in order that the giving or withholding of consent be a reasonably informed decision. The requisite pertinent facts to be disclosed to the patient are those which would be given by a like physician of good standing practicing in the same community. *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452 (1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Objective Medical-Community Standard.

The interpretation of this section as set forth in *Rook v. Trout*, 113 Idaho 652, 747 P.2d 61 (1987), is contrary to the clear meaning and intent of the express language contained in the statute. The language of this section clearly and expressly establishes an objective medical-community standard, not a subjective patient-based standard. *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452 (1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Purpose.

The doctrine of informed consent is the general principle of law that a physician has a duty to disclose to his patient those risks of injury which might result from a proposed course of treatment. *Sherwood v. Carter*, 119 Idaho 246, 805 P.2d 452 (1991), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, — Idaho —, — P.3d —, 2011 Ida. LEXIS 149 (Nov. 9, 2011).

Responsibility of Hospital.

Since the responsibility for informed consent regarding health care is statutorily placed upon the physician or dentist, a hospital has no responsibility for consent. *Keyser v. St. Mary's Hosp.*, 662 F. Supp. 191 (D. Idaho 1987).

§ 39-4507. Form of consent. — It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other specific form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

History.

I.C., § 39-4506, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 7, p. 579.

STATUTORY NOTES

Prior Laws.

Another former § 39-4507, which comprised **I.C., § 39-4506**, as added by 1977, ch. 106, § 1, p. 228; am. 1986, ch. 71, § 4, p. 196; am. and redesign. 1988, ch. 262, § 7, p. 508; am. 2004, ch. 56, § 3, p. 258, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4506 and inserted “specific” preceding “form of expression.”

Compiler’s Notes.

Former § 39-4507 was amended and redesignated as § 39-4508 by S.L. 2007, ch. 196, § 8.

CASE NOTES

Decisions Under Prior Law [Challenge to presumption.](#)

[Convincing proof.](#)

[Challenge to Presumption.](#)

Where a written consent is signed, this section states that the advice and level of informed awareness are only “presumed sufficient.” To challenge this, the plaintiff need not establish by convincing proof that the consent was secured maliciously or by fraud. [Rook v. Trout, 113 Idaho 652, 747 P.2d 61 \(1987\)](#), overruled on other grounds, [Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 \(1991\)](#).

Where plaintiff was challenging only the “advice and disclosures” and the “level of informed awareness,” he was only required to overcome an ordinary presumption as to the sufficiency of consent. [Rook v. Trout, 113 Idaho 652, 747 P.2d 61 \(1987\)](#), overruled on other grounds, [Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 \(1991\)](#).

[Convincing Proof.](#)

The “convincing proof” requirement of this section applies only to challenges regarding whether the patient consented to the furnishing of medical care, not to challenges to the sufficiency of the advice and disclosures and the level of informed awareness. [Rook v. Trout, 113 Idaho 652, 747 P.2d 61 \(1987\)](#), overruled on other grounds, [Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 \(1991\)](#).

Where the record totally lacked any allegations that had a reasonable person in the plaintiff’s position been adequately informed, that person would not have consented to the surgery, the court properly granted summary judgment to doctors in patient’s malpractice action. [Anderson v. Hollingsworth, 136 Idaho 800, 41 P.3d 228 \(2001\)](#).

§ 39-4508. Responsibility for consent and documentation. — Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered; provided however, a licensed hospital and any employee of a health care provider, acting with the approval of such an attending or other individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the person. In performing such a ministerial act, the hospital or health care provider employee shall not be deemed to have engaged in the practice of medicine or dentistry.

History.

I.C., § 39-4507, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 8, p. 579; am. 2012, ch. 302, § 6, p. 825.

STATUTORY NOTES

Prior Laws.

Another former § 39-4508, which comprised **I.C., § 39-4507**, as added by 1977, ch. 106, § 1, p. 228; am. and redesign. 1988, ch. 262, § 8, p. 508, was repealed by S.L. 2005, ch. 120, § 1.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4507 and twice deleted “lay or professional” following “dental office.”

The 2012 amendment, by ch. 302, in the first sentence, substituted “Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered” for “Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure,”

substituted “employee of a health care provider” for “medical or dental office employee,” and substituted “individual health care provider” for “physician or dentist”; and substituted “health care provider employee” for “medical or dental office employee” in the last sentence.

Compiler’s Notes.

Former § 39-4508 was amended and redesignated as § 39-4509 by S.L. 2007, ch. 196, § 9.

CASE NOTES

Decisions Under Prior Law Hospital.

Since the responsibility for informed consent regarding health care is statutorily placed upon the physician or dentist, a hospital has no responsibility for consent. *Keyser v. St. Mary’s Hosp.*, 662 F. Supp. 191 (D. Idaho 1987).

§ 39-4509. Statement of policy — Definition. — For purposes of sections 39-4509 through 39-4515, Idaho Code:

(1) The legislature recognizes the established common law and the fundamental right of competent persons to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The legislature further finds that persons are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the person because of the person's inability to communicate with the health care provider.

(2) In recognition of the dignity and privacy which persons have a right to expect, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the health care provider.

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication, and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner, provided that this sentence shall not be construed to authorize any violation of section 39-4514(3), Idaho Code. Any authentic expression of a person's wishes with respect to health care should be honored.

(4) "Competent person" means any person who meets the requirements of section 39-4503, Idaho Code.

History.

I.C., § 39-4508, as added by 2005, ch. 120, § 2, p. 380; am. and redesign. 2007, ch. 196, § 9, p. 579; am. 2012, ch. 302, § 7, p. 825; am. 2012, ch. 305, § 1, p. 844.

STATUTORY NOTES

Prior Laws.

Former § 39-4509, which comprised **I.C., § 39-4508**, as added by 1977, ch. 106, § 1, p. 228; am. and redesign. 1988, ch. 262, § 9, p. 508, was repealed by S.L. 2005, ch. 120, § 1.

Another former § 39-4509, which comprised **I.C., § 39-4509**, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 2, p. 199, was repealed by S.L. 2007, ch. 196, § 10.

Amendments.

The 2007 amendment, by ch. 196, redesignated the section from § 39-4508 and added “definition” in the section catchline; corrected the section references in the introductory language; in subsection (1), substituted “recognizes the established common law and the fundamental right of adult persons” for “finds that adult persons have the fundamental right”; in subsection (3), twice substituted the section references for “this chapter”; and added subsection (4).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, in subsections (1) and (2), substituted “person” or a variant thereof for “patient” or a variant thereof and substituted “health care provider” for “physician” twice; and substituted “who meets the requirements of **section 39-4503, Idaho Code**” for “emancipated minor or person eighteen (18) or more years of age who is of sound mind” in subsection (4).

The 2012 amendment, by ch. 305, added the proviso at the end of the second sentence in subsection (3).

§ 39-4510. Living will and durable power of attorney for health care.

— (1) Any competent person may execute a document known as a “Living Will and Durable Power of Attorney for Health Care.” Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. Any portions of the “Living Will and Durable Power of Attorney for Health Care” which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

**LIVING WILL AND DURABLE POWER OF ATTORNEY FOR
HEALTH CARE**

Date of Directive:

Name of person executing Directive:

Address of person executing Directive:

A LIVING WILL

A Directive to Withhold or to Provide Treatment

1. I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

a. I have an incurable or irreversible injury, disease, illness or condition, and a medical doctor who has examined me has certified:

1. That such injury, disease, illness or condition is terminal; and

2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and

3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be

required to keep me free of pain or distress.

Check one box and initial the line after such box:

☐ I direct that all medical treatment, care and procedures necessary to restore my health and sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

☐ I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

A. ☐ Only hydration of any nature, whether artificial or nonartificial, shall be administered;

B. ☐ Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;

C. ☐ Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

☐ I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

3. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this

Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

4. Check one box and initial the line after such box:

☐ I have discussed these decisions with my physician, advanced practice professional nurse or physician assistant and have also completed a Physician Orders for Scope of Treatment (POST) form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if fully set forth.

OR

☐ I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST form is later signed by my physician, advanced practice professional nurse or physician assistant, then this living will shall be deemed modified to be compatible with the terms of the POST form.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent:

Address of Health Care Agent:

Telephone Number of Health Care Agent:

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service

or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a living will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning artificial life-sustaining care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad

powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in my Physician Orders for Scope of Treatment (POST) form, a living will, or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations: (You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 (“Statement of Desires, Special Provisions, and Limitations”) above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), [42 U.S.C. 1320d](#) and [45 CFR 160 through 164](#). I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the MIB Group, Inc. (formerly the Medical Information Bureau, Inc.) or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all

information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. **SIGNING DOCUMENTS, WAIVERS AND RELEASES.** Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a “Refusal to Permit Treatment” and/or a “Leaving Hospital Against Medical Advice”; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. **DESIGNATION OF ALTERNATE AGENTS.** (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person’s appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. **First Alternate Agent:**

Name

Address

Telephone Number

B. **Second Alternate Agent:**

Name

Address

Telephone Number

C. Third Alternate Agent:

Name

Address

Telephone Number

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at (City, State).....

.....

Signature

(2) A health care directive meeting the requirements of subsection (1) of this section may be registered with the department of health and welfare pursuant to the provisions of [section 39-4515, Idaho Code](#). Failure to register the health care directive shall not affect the validity of the health care directive.

History.

[I.C., § 39-4510](#), as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 3, p. 199; am. 2007, ch. 196, § 11, p. 579; am. 2012, ch. 302, § 8, p. 825; am. 2020, ch. 297, § 1, p. 854.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 67, added the subsection (1) designation and added subsection (2).

The 2007 amendment, by ch. 196, in the introductory paragraph in subsection (1), deleted the former third through fifth sentences, which read: “A ‘Living Will and Durable Power of Attorney for Health Care’ executed prior to the effective date of this act, but which was in the ‘Living Will’ and/or ‘Durable Power of Attorney for Health Care’ form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. A ‘Living Will and Durable Power of Attorney for Health Care’ or similar document(s) executed in another state which substantially complies with this chapter shall be deemed to be in compliance with this chapter. In this chapter, a ‘Living Will and Durable Power of Attorney for Health Care’ may be referred to as a ‘directive’”; in the Living Will form, in subsection (1), deleted “Being of sound mind” from the beginning, in subsection (1)(a), inserted “or irreversible,” in the first boxed paragraph, in subsection (1)(b), deleted “and to abolish or alleviate pain or distress” following “sustain my life,” deleted former subsection (2), which read: “This Directive shall be the final expression of my legal right to refuse or accept medical and surgical treatment, and I accept the consequences of such refusal or acceptance” and redesignated subsections accordingly, and added subsection (4); in the Durable Power of Attorney form, in subsection (3), deleted “Subject to any limitations in this Directive, including as set forth in paragraph 2 immediately above” from the beginning, and in subsections (3) and (4), substituted “artificial life sustaining care” for “life-prolonging care,” and inserted “Physician Orders for Scope of Treatment (POST) form.”

The 2012 amendment, by ch. 302, inserted “advanced practice professional nurse or physician assistant” in both paragraphs of 4, under “A LIVING WILL” and inserted “the MIB Group, Inc.” in the third sentence of 5.B. under “A DURABLE POWER OF ATTORNEY FOR HEALTH CARE”.

The 2020 amendment, by ch. 297, substituted “department of health and welfare” for “secretary of state” near the middle of the first sentence in subsection (2).

Compiler’s Notes.

For more on the MIB Group, Inc., referred to in paragraph 5.B of the DURABLE POWER OF ATTORNEY FOR HEALTH CARE, see <https://www.mib.com>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 7 of S.L. 2006, ch. 67 provided “An emergency existing therefor, which emergency is hereby declared to exist, Section 6 of this act [§ 39-4515] shall be in full force and effect on and after its passage and approval [March 15, 2006] and Sections 1 through 5 of this act [§§ 9-340C, 39-4510, 39-4511A, 39-4513, and former 39-4509] shall be in full force and effect on and after July 1, 2006. The Secretary of State will accept registration applications pursuant to this act on or after January 1, 2007.”

§ 39-4511. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 39-4511 was amended and redesignated as § 39-4511A by S.L. 2012, ch. 302, § 9, effective July 1, 2012.

§ 39-4511A. Revocation of advance directive. — (1) A living will and durable power of attorney for health care or physician orders for scope of treatment (POST) form or other advance directive may be revoked at any time by the maker thereof by any of the following methods:

- (a) By being intentionally canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;
- (b) By a written, signed revocation of the maker thereof expressing his intent to revoke;
- (c) By an oral expression by the maker thereof expressing his intent to revoke; or
- (d) By any other action that clearly manifests the maker's intent to revoke the advance directive.

(2) The maker of the revoked advance directive is responsible for notifying his health care provider of the revocation. A health care provider who does not have actual knowledge of the revocation is entitled to rely on an otherwise apparently valid advance directive as though it had not been revoked.

(3) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a living will and durable power of attorney for health care, physician orders for scope of treatment (POST) form or other advance directive made pursuant to this chapter unless that person has actual knowledge of the revocation.

History.

I.C., § 39-4511, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 4, p. 199; am. 2007, ch. 196, § 12, p. 579; am. and redesign. 2012, ch. 302, § 9, p. 825; am. 2017, ch. 273, § 2, p. 713.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 67, added subsection (3).

The 2007 amendment, by ch. 196, in the introductory paragraph in subsection (1), inserted “or physician orders for scope of treatment (POST) form,” and deleted “without regard to his mental state or competence” following “by the maker thereof”; added subsection (2); redesignated former subsection (2) as (3), and therein inserted “or physician orders for scope of treatment (POST) form”; and deleted former subsection (3), which read: “A person may register a revocation of a health care directive which meets the requirements of subsection (1)(b) of this section with the secretary of state pursuant to the provisions of [section 39-4515, Idaho Code](#). Failure to register a revocation of the health care directive shall not affect the validity of the revocation.”

The 2012 amendment, by ch. 302, redesignated the section from § 39-4511; in subsection (1), inserted “or other similar advance directive” in the introductory paragraph and “intentionally” in paragraph (a); substituted “health care provider” for “physician” in subsection (2); and, in subsection (3), inserted “or other advance directive” and substituted “this chapter” for “this section.”

The 2017 amendment, by ch. 273, inserted “of advance directive” at the end of the section heading; in subsection (1), deleted “similar” preceding “advance directive” near the middle of the introductory paragraph and added paragraph (d); and rewrote subsection (2), which formerly read: “The maker of the revoked living will and durable power of attorney for health care is responsible for notifying his health care provider of the revocation”.

Compiler’s Notes.

This section was formerly compiled as § 39-4511.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 7 of S.L. 2006, ch. 67 provided “An emergency existing therefor, which emergency is hereby declared to exist, Section 6 of this act [§ 39-4515] shall be in full force and effect on and after its passage and approval [March 15, 2006] and Sections 1 through 5 of this act [§§ 9-340C, 39-4510, 39-4511A, 39-4513, and former 39-4509] shall be in full force and effect on

and after July 1, 2006. The Secretary of State will accept registration applications pursuant to this act on or after January 1, 2007.”

§ 39-4511B. Suspension of advance directive. — (1) A living will and durable power of attorney for health care, physician orders for scope of treatment (POST) form or other advance directive may be suspended at any time by the maker thereof by any of the following methods:

- (a) By a written, signed suspension by the maker thereof expressing his intent to suspend;
- (b) By an oral expression by the maker thereof expressing his intent to suspend; or
- (c) By any other action that clearly manifests the maker's intent to suspend the advance directive.

(2) A health care provider who does not have actual knowledge of the suspension is entitled to rely on an otherwise apparently valid advance directive as though it had not been suspended.

(3) Upon meeting the termination terms of the suspension, as defined by the written or oral expression by the maker, the conditions set forth in the living will and durable power of attorney, physician orders for scope of treatment (POST) or other advance directive will resume.

History.

I.C., § 39-4511B, as added by 2012, ch. 302, § 10, p. 825; am. 2017, ch. 273, § 3, p. 713.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 273, inserted “of advance directive” at the end of the section heading; in subsection (1), deleted “similar” preceding “advance directive” in the introductory paragraph and added paragraph (c); added present subsection (2), redesignating former subsection (2) as subsection (3).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

§ 39-4512. Execution of living will and durable power of attorney for health care. — A “Living Will and Durable Power of Attorney for Health Care” shall be effective from the date of execution unless otherwise revoked. Nothing in this chapter shall be construed to prevent a competent person from reexecuting a “Living Will and Durable Power of Attorney for Health Care” at any time.

History.

I.C., § 39-4512, as added by 2005, ch. 120, § 2, p. 380.

§ 39-4512A. Physician orders for scope of treatment (POST). — (1) A physician orders for scope of treatment (POST) form is a health care provider order signed by a physician or by a PA or by an APPN. The POST form must also be signed by the person, or it must be signed by the person's surrogate decision maker provided that the POST form is not contrary to the person's last known expressed wishes or directions.

(2) The POST form shall be effective from the date of execution unless suspended or revoked.

(3) The attending physician, APPN or PA shall, upon request of the person or the person's surrogate decision maker, provide the person or the person's surrogate decision maker with a copy of the POST form, discuss with the person or the person's surrogate decision maker the form's content and ramifications and treatment options, and assist the person or the person's surrogate decision maker in the completion of the form.

(4) The attending physician, APPN or PA shall review the POST form:
(a) Each time the physician, APPN or PA examines the person, or at least every seven (7) days, for persons who are hospitalized; and (b) Each time the person is transferred from one (1) care setting or care level to another; and (c) Any time there is a substantial change in the person's health status; and (d) Any time the person's treatment preferences change.

Failure to meet these review requirements does not affect the POST form's validity or enforceability. As conditions warrant, the physician, APPN or PA may issue a superseding POST form. The physician, APPN or PA shall, whenever practical, consult with the person or the person's surrogate decision maker.

(5) A person who has completed a POST form pursuant to the provisions of this section or for whom a POST form has been completed at the request of his or her surrogate decision maker may wear a POST identification device as provided in [section 39-4502\(15\), Idaho Code](#).

(6) The department of health and welfare shall develop the POST form.

History.

I.C., § 39-4512A, as added by 2007, ch. 196, § 13, p. 579; am. 2012, ch. 302, § 11, p. 825.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2012 amendment, by ch. 302, rewrote this section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

§ 39-4512B. Adherence to physician orders for scope of treatment (POST) protocol. — (1) Health care providers and emergency medical services personnel shall comply with a person’s physician orders for scope of treatment (POST) instruction when presented with a POST form that meets the requirements of [section 39-4512A, Idaho Code](#), or when a person is wearing a proper POST identification device pursuant to [section 39-4512A\(5\), Idaho Code](#).

(2) A POST form that meets the requirements of [section 39-4512A, Idaho Code](#), is deemed to meet the requirements of “Do Not Resuscitate (DNR)” orders at all Idaho health care facilities. Health care providers and emergency medical services personnel shall not require the completion of other forms in order for the person’s wishes to be respected.

(3) Nothing in this chapter is intended to nor shall it prevent physicians or other health care providers from executing or utilizing DNR orders consistent with their licensure; provided however, that if the person or person’s surrogate decision maker chooses to utilize the POST form, the health care provider shall accept and comply with the POST form and shall not require the completion of a DNR order in addition to a valid POST form.

History.

[I.C., § 39-4512B](#), as added by 2007, ch. 196, § 14, p. 579; am. 2012, ch. 302, § 12, p. 825.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 302, inserted “that meets the requirements of [section 39-4512A, Idaho Code](#)” in both subsections (1) and (2), deleted “signed by a physician” following “POST form” in subsection (1), and added subsection (3).

Compiler’s Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

§ 39-4512C. Duty to inspect. — Health care providers and emergency medical services personnel shall make reasonable efforts to inquire as to whether the patient has completed a physician orders for scope of treatment (POST) form and inspect the patient for a POST identification device when presented with a situation calling for artificial life-sustaining treatment not caused by severe trauma or involving mass casualties and with no indication of homicide or suicide.

History.

I.C., § 39-4512C, as added by 2007, ch. 196, § 15, p. 579.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-4513. Immunity. — (1) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form, living will, DNR order or other health care directive, or pursuant to a POST identification device as provided for in [section 39-4512A\(5\), Idaho Code](#).

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the person who may give consent to care for the patient under [section 39-4504, Idaho Code](#), as expressed by the procedures set forth in this chapter may, subject to the requirements of [section 39-4514\(3\), Idaho Code](#), withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the person in obtaining the services of another physician or other health care provider who is willing to provide care for the person in accordance with the person's expressed or documented wishes.

(3) No person who exercises the responsibilities of a durable power of attorney for health care in good faith shall be subject to civil or criminal liability as a result.

(4) Neither the registration of a health care directive in the health care directive registry under [section 39-4515, Idaho Code](#), nor the revocation of such a directive requires a health care provider to request information from that registry. The decision of a health care provider to request or not to request a health care directive document from the registry shall be immune from civil or criminal liability. A health care provider who in good faith acts in reliance on a facially valid health care directive received from the health care directive registry shall be immune from civil or criminal liability for those acts done in such reliance.

(5) Health care providers and emergency medical services personnel may disregard the POST form or a POST identification device or a DNR order:

- (a) If they believe in good faith that the order has been revoked; or
- (b) To avoid oral or physical confrontation; or
- (c) If ordered to do so by the attending physician.

History.

I.C., § 39-4513, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 5, p. 199; am. 2007, ch. 196, § 16, p. 579; am. 2012, ch. 302, § 13, p. 825; am. 2012, ch. 305, § 2, p. 844.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 67, added subsection (4).

The 2007 amendment, by ch. 196, rewrote subsection (1), which formerly read: “No medical personnel or health care facility shall be civilly or criminally liable for acts or omissions carried out or performed pursuant to the directives in a facially valid living will or by the holder of a facially valid durable power of attorney or directive for health care if the medical personnel or health care facility acts in good faith”; in subsection (2), inserted “before withdrawal of his or her participation,” deleted “before withdrawal” following the last occurrence of “health care provider,” and added the language beginning “who is willing to provide care”; and added subsection (5).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, substituted the current ending of subsection (1) beginning “DNR order” for “by the holder of a facially valid durable power of attorney or directive for health care”; added “or a DNR order” in the introductory paragraph in subsection (5); and substituted “person” for “patient” throughout the section.

The 2012 amendment, by ch. 305, in subsection (2), substituted “person who may give consent to care for the patient under [section 39-4504, Idaho Code](#)” for “patient” and inserted “subject to the requirements of [section 39-4514\(3\), Idaho Code](#)”.

Effective Dates.

Section 7 of S.L. 2006, ch. 67 provided “An emergency existing therefor, which emergency is hereby declared to exist, Section 6 of this act [§ 39-4515] shall be in full force and effect on and after its passage and approval [March 15, 2006] and Sections 1 through 5 of this act [§§ 9-340C, 39-4510, 39-4511A, 39-4513, and former 39-4509] shall be in full force and effect on and after July 1, 2006. The Secretary of State will accept registration applications pursuant to this act on or after January 1, 2007”.

§ 39-4514. General provisions. — (1) Application. Except as specifically provided herein, sections 39-4510 through 39-4512B, Idaho Code, shall have no effect or be in any manner construed to apply to persons not executing a living will and durable power of attorney for health care, POST form or other health care directive pursuant to this chapter nor shall these sections in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in any manner.

(2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, including any act or omission described in section 18-4017, Idaho Code, other than to allow the natural process of dying.

(3) Withdrawal of care. Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision-maker in accordance with section 39-4504, Idaho Code. Health care necessary to sustain life or to provide appropriate comfort for a patient other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision-maker in accordance with section 39-4504, Idaho Code, unless such care would be futile care as defined in subsection (6) of this section. Except as specifically provided in chapters 3 and 4, title 66, Idaho Code, health care, assisted feeding or artificial nutrition and hydration, the denial of which is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision-maker in accordance with section 39-4504, Idaho Code, shall be withdrawn and denied in accordance with a valid directive. This subsection

does not require provision of treatment to a patient if it would require denial of the same or similar treatment to another patient.

(4) Comfort care. Persons caring for a person for whom artificial life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide comfort care as defined in [section 39-4502, Idaho Code](#).

(5) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless:

- (a) CPR is contrary to the person's advance directive and/or POST;
- (b) The person's surrogate decision-maker has communicated the person's unconditional wishes not to receive CPR;
- (c) The person's surrogate decision-maker has communicated the person's conditional wishes not to receive CPR and those conditions have been met;
- (d) The person has a proper POST identification device pursuant to [section 39-4502\(15\), Idaho Code](#); or
- (e) The attending health care provider has executed a DNR order consistent with the person's prior expressed wishes or the directives of the legally authorized surrogate decision-maker.

(6) Futile care. Nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile; provided that this subsection does not authorize any violation of subsection (3) of this section. Futile care does not include comfort care. Futile care is a course of treatment:

- (a) For a patient with a terminal condition for whom, in reasonable medical judgment, death is imminent within hours or at most a few days whether or not the medical treatment is provided and that, in reasonable medical judgment, will not improve the patient's condition; or
- (b) The denial of which in reasonable medical judgment will not result in or hasten the patient's death.

(7) Existing directives and directives from other states. A health care directive executed prior to July 1, 2012, but which was in the living will,

durable power of attorney for health care, DNR, or POST form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. Health care directives or similar documents executed in another state that substantially comply with this chapter shall be deemed to be in compliance with this chapter. This section shall be liberally construed to give the effect to any authentic expression of the person's prior wishes or directives concerning his or her health care.

(8) Insurance.

(a) The making of a living will and/or durable power of attorney for health care, physician orders for scope of treatment (POST) form, or DNR order pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured person, notwithstanding any term of the policy to the contrary.

(b) No physician, health care facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a living will and durable power of attorney for health care or physician orders for scope of treatment (POST) form, or DNR order as a condition for being insured for, or receiving, health care services.

(9) Portability and copies.

(a) A physician orders for scope of treatment (POST) form that meets the requirements of [section 39-4512A, Idaho Code](#), shall be transferred with the person to, and be effective in, all care settings including, but not limited to, home care, ambulance or other transport, hospital, residential care facility, and hospice care. The POST form shall remain in effect until such time as there is a valid revocation pursuant to [section 39-4511A, Idaho Code](#), or new orders are issued by a physician, APPN or PA.

(b) A photostatic, facsimile or electronic copy of a valid physician orders for scope of treatment (POST) form may be treated as an original by a health care provider or by an institution receiving or treating a person.

(10) Registration. A directive or the revocation of a directive meeting the requirements of this chapter may be registered with the department of health and welfare pursuant to [section 39-4515, Idaho Code](#). Failure to register the health care directive shall not affect the validity of the health care directive.

(11) Rulemaking authority.

(a) The department of health and welfare shall adopt those rules and protocols necessary to administer the provisions of this chapter.

(b) In the adoption of a physician orders for scope of treatment (POST) or DNR protocol, the department shall adopt standardized POST identification devices to be used statewide.

History.

[I.C., § 39-4514](#), as added by 2005, ch. 120, § 2, p. 380; am. 2007, ch. 196, § 17, p. 579; am. 2012, ch. 302, § 14, p. 825; am. 2012, ch. 305, § 3, p. 844; am. 2013, ch. 151, § 1, p. 349; am. 2013, ch. 187, § 5, p. 447; am. 2017, ch. 273, § 4, p. 713; am. 2020, ch. 297, § 2, p. 854.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2007 amendment, by ch. 196, in subsection (1), added “Application,” and inserted “or POST form” and “or chapter 4”; rewrote subsection (2), which formerly read: “The making of a ‘Living Will and Durable Power of Attorney for Health Care’ pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or

withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary”; rewrote subsection (3), which formerly read: “No physician, health facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a ‘Living Will and Durable Power of Attorney for Health Care’ as a condition for being insured for, or receiving, health care services”; and added subsections (4) through (10).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, rewrote the section to the extent that a detailed comparison is impracticable.

The 2012 amendment, by ch. 305, added the exception at the beginning of subsection (1); added subsection (3), renumbering the subsequent subsections; and, in subsection (6), added “provided that this subsection does not authorize any violation of subsection (3) of this section. Futile care does not include comfort care. Futile care is a course of treatment” in the introductory paragraph and added paragraphs (a) and (b).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 151, inserted “necessary to sustain life or to provide appropriate comfort for a patient” in the second sentence in subsection (3).

The 2013 amendment, by ch. 187, substituted “sections” for “Sections” near the beginning of subsection (1).

The 2017 amendment, by ch. 273, rewrote subsection (5), which formerly read: “(5) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless: (a) A completed durable power of attorney for health care or living will for that person is in effect, pursuant to [section 39-4510, Idaho Code](#), in which the person has stated that he or she does not wish to receive cardiopulmonary resuscitation, and any terms set forth in the durable power of attorney for health care or living will upon which such statement is

conditioned have been met; or (b) The person's surrogate decision maker has communicated the person's wishes not to receive cardiopulmonary resuscitation and any terms on which the wishes not to receive cardiopulmonary resuscitation are conditioned have been met; or (c) The person has a physician orders for scope of treatment (POST) form that meets the requirements of [section 39-4512A, Idaho Code](#), stating that the person does not wish to receive cardiopulmonary resuscitation and any terms on which the statement is conditioned have been met and/or has a proper POST identification device pursuant to [section 39-4502\(15\), Idaho Code](#)".

The 2020 amendment, by ch. 297, substituted "department of health and welfare" for "secretary of state" near the end of the first sentence in subsection (10).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

§ 39-4515. Health care directive registry. — (1) The department of health and welfare shall create and maintain a health care directive registry. The health care directive registry shall be accessible through a web-based platform. The information contained in such registry shall include: the full name of the person executing the health care directive as stated in the directive, a file identification number unique to the person executing the directive, and the date the directive was executed. The registry shall be made available twenty-four (24) hours a day, seven (7) days a week and shall incorporate directives previously submitted to the secretary of state.

A person may register with the department of health and welfare a health care directive or a revocation of a health care directive by submitting the directive or revocation, completing and submitting an informational registration form as required by the department of health and welfare, and paying the department the fee that the department may require for registering a health care directive. The person may register either online or by submitting the registration form in the mail. The person who submits a document for registration pursuant to this section by mail shall provide a return address.

The department of health and welfare may charge and collect a fee not to exceed ten dollars (\$10.00) for the filing of a health care directive. All fees collected for the filing of a health care directive shall be deposited into the health care directive registry fund. No fee shall be charged for revoking a health care directive.

(2) The registry established under this section shall be accessible only by entering the identification file number and the assigned password on the health care directive registry.

(3) The department of health and welfare and those granted access to the health care directive registry shall use information contained in the registry only for purposes prescribed in this section. No person granted access to the registry shall use the information for commercial solicitations or in any fraudulent or improper way. Any commercial solicitation or fraudulent or improper use of information contained in the registry shall constitute a

violation of this section and a violation of the Idaho consumer protection act.

(4) The department of health and welfare is not required to review a health care directive or revocation thereof to ensure that the document complies with any applicable and statutory requirements. Entry of a document into the health care directive registry pursuant to this section does not create a presumption favoring the validity of the document.

(5) The department of health and welfare shall delete a health care directive and the informational registration form from the health care directive registry when the department of health and welfare receives:

(a) Written notification to remove a health care directive signed by the maker thereof or that person's legal representative along with the identification file number and assigned password; or

(b) Verification from the bureau of vital records and health statistics of the department of health and welfare that the person who executed the health care directive is deceased. The deletion under this paragraph shall be performed not less than once every two (2) years.

(6) Neither the department of health and welfare nor the state of Idaho shall be subject to civil liability for any claims or demands arising out of the administration or operation of the health care directive registry.

(7) There is hereby created in the state treasury the health care directive registry fund, the moneys of which shall be continuously appropriated, administered by the department of health and welfare, and used to support, promote and maintain the health care directive registry. The fund shall consist of fees paid by persons registering health care directives under this section and income from investment from the fund, gifts, grants, bequests and other forms of voluntary donations. On notice from the department of health and welfare, the state treasurer shall invest and divest moneys in the fund, and moneys earned from such investment shall be credited to the fund.

History.

I.C., § 39-4515, as added by 2006, ch. 67, § 6, p. 199; am. 2020, ch. 297, § 3, p. 854.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2020 amendment, by ch. 297, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 7 of S.L. 2006, ch. 67 provided “An emergency existing therefor, which emergency is hereby declared to exist, Section 6 of this act [§ 39-4515] shall be in full force and effect on and after its passage and approval [March 15, 2006] and Sections 1 through 5 of this act [§§ 9-340C, 39-4510, 39-4511A, 39-4513, and former 39-4509] shall be in full force and effect on and after July 1, 2006. The Secretary of State will accept registration applications pursuant to this act on or after January 1, 2007.”

§ 39-4516. Life-sustaining treatment for unemancipated minors. —

(1) This section shall be known and may be cited as “Simon’s Law.”

(2) As used in this section:

(a) “Order not to resuscitate” means a physician’s order that resuscitative measures shall not be provided to a person under a physician’s care in the event the person is found to have cardiopulmonary cessation. “Order not to resuscitate” shall include but is not limited to physician orders written as “do not resuscitate,” “do not allow resuscitation,” “do not allow resuscitative measures,” “DNAR,” “DNR,” “allow natural death,” or “AND”;

(b) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent health care provider who is knowledgeable about a patient’s case and the treatment possibilities with respect to the medical conditions involved; and

(c) “Unemancipated minor” means a minor who is not married or is not in active military service.

(3) An order not to resuscitate, an order to withhold artificial life-sustaining procedures, an order to withhold artificial nutrition and hydration, and a similar physician’s order shall not be instituted, either orally or in writing, unless at least one (1) parent or legal guardian of an unemancipated minor who is a patient or resident of a hospital or health care facility under whose care the unemancipated minor has been admitted has first been notified of the physician’s intent to institute such an order, and reasonable attempts have been made to notify any other parent or legal guardian, provided such parent or guardian is reasonably available and has custodial or visitation rights. Such notification must be provided both orally and in writing to at least one (1) parent or legal guardian of the unemancipated minor patient unless, in the physician’s reasonable medical judgment, the urgency of the decision requires reliance on only providing the information orally. Such notification must also include informing the parent or legal guardian of the forty-eight (48) hour provision in subsection (5) of this section. Unless the parent or legal guardian agrees with the

implementation of the following orders, an order not to resuscitate, an order to withhold artificial life-sustaining procedures, an order to withhold artificial nutrition and hydration, or a similar physician's order shall not be instituted, either orally or in writing, until at least forty-eight (48) hours after oral and written notice have been provided to at least one (1) parent or legal guardian in accordance with this section. The provision of such notification must be contemporaneously recorded in the patient's medical record, specifying by whom and to whom the notification was given, the date and time of its provision, and whether it was provided in writing as well. When only one (1) parent or guardian has been notified, the nature of reasonable attempts to inform another parent or guardian, or the reason why such attempts were not made, must also be contemporaneously recorded in the unemancipated minor patient's medical record.

(4) The requirements of subsection (3) of this section shall not apply after seventy-two (72) hours of diligent efforts have been made by the health care provider, without success, to contact and notify at least one (1) known parent or legal guardian of the unemancipated minor patient of the intent to implement an order not to resuscitate, an order to withhold artificial life-sustaining procedures, an order to withhold artificial nutrition and hydration, or a similar physician's order.

(5) Within forty-eight (48) hours of being notified of the intent to institute an order not to resuscitate, an order to withhold artificial life-sustaining procedures, an order to withhold artificial nutrition and hydration, or a similar physician's order according to subsection (3) of this section, a parent or legal guardian shall be entitled to request a transfer of the unemancipated minor patient or resident to another facility or discharge. If a transfer is requested by a parent or legal guardian, the hospital or health care facility under whose care the unemancipated minor is admitted must continue provision of artificial life-sustaining procedures and life-sustaining artificial nutrition and hydration for a minimum of fifteen (15) days after the transfer request has been made known and make every reasonable effort to assist the requesting parent or legal guardian in the transfer process. The hospital or health care facility's duties and financial obligations regarding transfer shall be governed by existing state law, applicable rules or regulations, hospital policy, and relevant third-party payment contracts.

(6) If a transfer cannot be arranged and executed within fifteen (15) days from the parent's or guardian's request to transfer, an order not to resuscitate, an order to withhold artificial life-sustaining procedures, an order to withhold artificial nutrition and hydration, or a similar physician's order may be instituted.

(7) Nothing in this section shall be construed to limit the rights pursuant to section 39-4503, 39-4504, 39-4509, or 39-4510, Idaho Code.

History.

I.C., § 39-4516, as added by 2020, ch. 337, § 1, p. 980.

Chapter 46
IDAHO DEVELOPMENTAL DISABILITIES SERVICES AND
FACILITIES ACT

Sec.

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39-4607. Effect on existing facilities.

39-4608. Discrimination prohibited.

§ 39-4601. Short title. — This chapter shall be known and may be cited as the “Idaho Developmental Disabilities Services and Facilities Act of 1978.”

History.

I.C., § 39-4601, as added by 1978, ch. 270, § 1, p. 624.

STATUTORY NOTES

Compiler’s Notes.

Chapters 240 and 270 of S.L. 1978 each purported to enact a new chapter 46 in title 39. Accordingly, chapter 270 was codified as chapter 46 of title 39, while chapter 270 was codified as chapter 48 of title 39 through the use of brackets. Chapter 47 of title 39 was added by S.L. 1978, chapter 155. The redesignation of the sections enacted by S.L. 1978, chapter 240 was made permanent by S.L. 1979, chapter 313.

CASE NOTES

Cited *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

§ 39-4602. Purpose. — It is declared to be the policy of the legislature of the state of Idaho to authorize and mandate the department of health and welfare to develop and coordinate services for developmentally disabled persons through adult and child development programs and through contracts with rehabilitation facilities. The complexities of developmental disabilities require the services of many state departments as well as those of the community. It is the intent of this chapter that the department of health and welfare will cooperate with recognized agencies, organizations and departments in implementing this chapter. Services should be planned and provided as a part of a continuum. A pattern of facilities, services and eligibility should be established which is sufficiently complete to meet the needs of each developmentally disabled person regardless of age or degree of disability, with consideration of the family.

History.

I.C., § 39-4602, as added by 1978, ch. 270, § 1, p. 624; am. 2010, ch. 235, § 26, p. 542.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2010 amendment, by ch. 235, substituted “disability” for “handicap” in the last sentence.

§ 39-4603. Declaration of rights. — Persons with developmental disabilities shall have the same legal rights and responsibilities guaranteed all other persons by the constitution and laws of the United States of America and by the constitution and laws of the state of Idaho.

History.

I.C., § 39-4603, as added by 1978, ch. 270, § 1, p. 624.

§ 39-4604. Definitions. — As used in this chapter:

(1) “Comprehensive developmental disability system” means a system of services including, but not limited to, the following basic services with the intention of providing alternatives to institutionalization: (a) Evaluation services;

(b) Diagnostic services;

(c) Treatment services;

(d) Individualized developmental programs; (e) Extended sheltered employment and work activities; (f) Recreation services;

(g) Domiciliary care services; (h) Special living arrangement services; (i) Counseling services;

(j) Information and referral services; (k) Follow-along services; and (l) Transportation services.

(2) “Department” means the Idaho department of health and welfare.

(3) “Developmental disabilities facility” means any service or group of services which provide care to the developmentally disabled on an inpatient, outpatient, residential, clinical or other programmatic basis, including sheltered workshops and adult and child development centers.

(4) “Developmental disability” is: (a) Attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; (b) Has continued or can be expected to continue indefinitely; and (c) Constitutes a substantial limitation to such person’s ability to function normally in society.

(5) “Habilitation” is the process of developing skills and abilities.

(6) “Normalization” is the process of providing services which promote a life as much as possible like that of the rest of the community, including living in the community and access to community resources.

(7) “Rehabilitation” is the process of improving skills or level of adjustment to increase the person’s ability to maintain satisfactory independent or dependent functioning.

(8) “Substantial limitation” is:

(a) A disability which results in substantial function limitation in three (3) or more of the following areas of major life activity: (i) Self-care;

(ii) Receptive and expressive language; (iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; or (vii) Economic self-sufficiency; and (b) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are: (i) Lifelong or extended duration, and (ii) Individually planned and coordinated.

History.

[I.C., § 39-4604](#), as added by 1978, ch. 270, § 1, p. 624; am. 2010, ch. 235, § 27, p. 542.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2010 amendment, by ch. 235, alphabetized the definitions, making subsection redesignations; in paragraph (4)(a), substituted “intellectual disability” for “mental retardation”; and in paragraph (4)(c) and in the introductory language in subsection (8), substituted “limitation” for “handicap.”

CASE NOTES

Cited [George ex rel. George v. Donovan](#), 114 Idaho 388, 757 P.2d 651 (1987).

§ 39-4605. Duties of the department. — The department shall provide appropriate services of habilitation and rehabilitation to the eligible population of developmentally disabled, and shall consult with the state council on developmental disabilities. The department shall be the primary agency responsible for the services set forth herein, and shall:

(1) Develop and prepare an annual plan for the initiation and maintenance of developmental disabilities services authorized in this chapter. Such services shall include, but not be limited to community comprehensive developmental disability services; (2) Initiate and provide services which shall include, but not be limited to, community comprehensive developmental disabilities services; (3) In order to provide services, enter into agreements with any person or persons, corporation or association, approved by the department, for the contracting of all or a portion of the costs of the care, treatment, maintenance, support and training of developmentally disabled persons; and (4) Provide technical assistance for state and local personnel working in the field of developmental disabilities under this chapter.

Any person, corporation or association may make application to the department for approval and certification of the applicant's developmental disabilities facility. The department may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the health, safety and the care, treatment, maintenance, training and support of developmentally disabled persons, in accordance with standards as set forth in rules and regulations promulgated by the board of health and welfare and consistent with existing national accreditation bodies.

History.

I.C., § 39-4605, as added by 1978, ch. 270, § 1, p. 624; am. 1980, ch. 325, § 8, p. 820.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

State council on developmental disabilities, § 67-6701 et seq.

Effective Dates.

Section 11 of S.L. 1980, ch. 325 declared an emergency. Approved April 2, 1980.

CASE NOTES

Funds.

Mandamus did not lie to compel the department of health and welfare to provide habilitative services for disabled children, where the agency had not refused to perform a duty directed by the legislature, but had actually performed the duty and simply run out of funds. *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

Although the department of health and welfare was required to provide services to developmentally handicapped children, it was constitutionally prohibited from transferring funds into the developmental disabilities program from nonmandatory programs, absent appropriation by the legislature. *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

§ 39-4606. Eligibility for services. — Any person suspected of a developmental disability shall be eligible for initial intake and for diagnostic services through any comprehensive developmental disability center, without reference to any other eligibility criteria.

History.

I.C., § 39-4606, as added by 1978, ch. 270, § 1, p. 624.

§ 39-4607. Effect on existing facilities. — Nothing in this chapter shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History.

I.C., § 39-4607, as added by 1978, ch. 270, § 1, p. 624.

§ 39-4608. Discrimination prohibited. — The services provided under this chapter shall be made available without discrimination on the basis of race, color, creed or ability to pay.

History.

I.C., § 39-4608, as added by 1978, ch. 270, § 1, p. 624.

Chapter 47
YELLOW DOT MOTOR VEHICLE MEDICAL INFORMATION
ACT

Sec.

39-4701. Short title.

39-4702. Legislative intent.

39-4703. Definitions.

39-4704. Authorization and funding.

39-4705. Publicizing program.

39-4706. Standard medical information form.

39-4707. Distribution of program materials.

39-4708. Motor vehicle accidents or emergency situations.

39-4709. Liability.

39-4710. Presence of a yellow dot on a motor vehicle shall not provide probable cause.

§ 39-4701. Short title. — This act shall be known and may be cited as the “Yellow Dot Motor Vehicle Medical Information Act.”

History.

I.C., § 39-4701, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former chapter 47, Title 39, which comprised §§ 39-4701 to 39-4708,, Legislative intent — Definitions — Standards of provision of respite care — Who may provide respite care — Eligibility for use of care — Reimbursement to providers for services — Liability of actions, was repealed by S.L. 1997, ch. 33§ 9, effective July 1, 1997. For present comparable law, see §§ 39-5101 to 39-5106.

Compiler’s Notes.

The term “this act” refers to S.L. 2020, Chapter 283, codified as §§ 39-4701 through 39-4710.

§ 39-4702. Legislative intent. — It is the intent of the Legislature to establish a yellow dot program to assist:

(1) Drivers and passengers who participate in the program; (2) Emergency medical responders in reporting critical medical information in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle; and (3) Peace officers, or other law enforcement personnel, in becoming aware of a motorist's or passenger's critical medical information that may affect the officer's encounter with the motorist or passenger during a traffic stop or welfare check.

History.

I.C., § 39-4702, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 39-4702 was repealed. See Prior Laws § 39-4701.

§ 39-4703. Definitions. — As used in this chapter:

(1) “Accident” means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile, or special mobile equipment.

(2) “Department” means the department of health and welfare.

(3) “Driver” means every person who drives or is in actual physical control of a vehicle.

(4) “Emergency medical responder” means:

(a) Emergency medical services licensed personnel as defined in [section 56-1012\(19\), Idaho Code](#); or

(b) A physician, nurse, or other health care provider on the scene of a motor vehicle accident or emergency situation as provided in [section 39-4708, Idaho Code](#), or who is accompanying or attending a patient removed from such an accident or emergency situation in an ambulance.

(5) “Motor vehicle” or “vehicle” means every vehicle that is self-propelled and, for the purpose of titling and registration meets federal motor vehicle safety standards as defined in [section 49-107, Idaho Code](#). Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices, personal delivery devices, electric-assisted bicycles, and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.

(6) “Other responder” means a firefighter, peace officer, or other law enforcement personnel on the scene.

(7) “Peace officer” means any employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of this state or any political subdivision of this state.

(8) “Yellow dot motor vehicle medical information program” or “yellow dot program” means the program established pursuant to this chapter.

History.

I.C., § 39-4703, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 50-1001 et seq.

Prior Laws.

Former § 39-4703 was repealed. See Prior Laws § 39-4701.

§ 39-4704. Authorization and funding. — (1) The department is authorized to develop and assist in the implementation of the yellow dot program.

(2) The department may accept donations and grants from any source, including eligible federal safety funds, to pay the expenses the department in the development and implementation of the yellow dot program.

History.

I.C., § 39-4704, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 39-4704 was repealed. See Prior Laws § 39-4701.

§ 39-4705. Publicizing program. — The department shall take reasonable measures to publicize the yellow dot program to potential participants, law enforcement officers, and emergency medical responders. In publicizing the yellow dot program, the department may cooperate with local law enforcement agencies, fire departments, emergency medical services agencies, the department of veterans affairs, and other governmental agencies. The department may also cooperate with and seek the assistance of interested nonprofit organizations, including but not limited to AARP, American automobile association, disabled American veterans, American veterans (AMVETS), the American legion, veterans of foreign wars of the United States, the military order of the purple heart, and the Idaho commission on aging. The department may also develop training materials on the yellow dot program that may be furnished to law enforcement agencies, fire departments, and emergency medical services agencies and used by such organizations for training purposes.

History.

I.C., § 39-4705, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Cross References.

Commission on aging, § 67-5001 et seq.

Division of veterans services, § 65-201 et seq.

Prior Laws.

Former § 39-4705 was repealed. See Prior Laws § 39-4701.

Federal References.

The department of veterans affairs, referred to in this section, is organized under 38 U.S.C.S. § 301 et seq.

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 39-4706. Standard medical information form. — (1) The department is authorized to create a standard medical information form providing space for each participant to supply, at a minimum, the following information:

(a) The participant's name;

(b) A photograph of the participant; (c) Two (2) emergency contacts identified by the participant and their contact information; (d) The participant's relevant medical information, including medical conditions, recent surgeries, allergies, and medications; (e) The participant's hospital preference; (f) Up to two (2) preferred physicians identified by the participant and their contact information; and (g) The date on which the participant completed the form.

(2) The medical information form shall include a statement that the yellow dot program functions only as a facilitator and that all information supplied on the medical information form is the sole responsibility of the participant.

(3) The medical information form shall also include statements that the participant supplies the medical information voluntarily and that the participant authorizes the disclosure to, and use of, such medical information by emergency medical responders and other responders for the purposes described in [section 39-4708, Idaho Code](#).

History.

[I.C., § 39-4706](#), as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 39-4706 was repealed. See Prior Laws § 39-4701.

§ 39-4707. Distribution of program materials. — (1) The department may provide for, assist in, or authorize the printing of the standard medical information form as provided in [section 39-4706, Idaho Code](#), and assembling of a yellow dot folder containing the medical information form and a yellow dot decal with an adhesive backing.

(2) Upon request, the department may provide yellow dot folders to the agencies and nonprofit organizations identified in [section 39-4705, Idaho Code](#), subject to the limitations of resources for funding the program. The department may allow such agencies and organizations to copy the standard medical information form and assemble yellow dot folders for distribution to participants, or the department may authorize these agencies and organizations to prepare yellow dot folders for distribution.

(3) The department may also provide for dissemination of the medical information form and other yellow dot materials online.

(4) The department shall not charge any fee to participate in the yellow dot program.

History.

[I.C., § 39-4707](#), as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 39-4707 was repealed. See Prior Laws § 39-4701.

§ 39-4708. Motor vehicle accidents or emergency situations. — (1) If a driver or passenger of a motor vehicle becomes involved in a motor vehicle accident or emergency situation and a yellow dot decal is affixed to the vehicle, an emergency medical responder or other responder at the scene is authorized to search the vehicle for a yellow dot folder or folders.

(2) An emergency medical responder or other responder may use the information contained in the yellow dot folder for the following purposes:

- (a) To identify a participant in the yellow dot program;
- (b) To ascertain whether the participant has a medical condition that may impede communication with the responder;
- (c) To communicate with the participant's emergency contacts about the location and general condition of the participant; and
- (d) To consider the person's current medications and preexisting medical conditions when emergency medical treatment is administered for any injury the participant suffers.

(3) If, during a traffic stop involving a motor vehicle with a yellow dot decal affixed to the vehicle, a law enforcement officer reasonably believes the driver or passenger has a medical condition that is affecting the officer's encounter with the driver or a passenger, such law enforcement officer, upon receiving consent from the driver or passenger, is authorized to review any yellow dot folder or folders present in the vehicle.

History.

I.C., § 39-4708, as added by 2020, ch. 283, § 1, p. 824.

STATUTORY NOTES

Prior Laws.

Former § 39-4708 was repealed. See Prior Laws § 39-4701.

§ 39-4709. Liability. — Except for wanton or willful conduct, no emergency medical responder or other responder, nor any employer of an emergency medical responder or other responder, shall incur any liability if the emergency medical responder or other responder is unable to make contact, in good faith, with an emergency contact person or disseminates or fails to disseminate any information from the yellow dot folder to other emergency medical responders, hospitals, or any health care providers who render emergency medical treatment to the participant. No health care provider or employer of a health care provider shall incur any civil or criminal liability if the provider relies in good faith on the information provided through the yellow dot program.

History.

I.C., § 39-4709, as added by 2020, ch. 283, § 1, p. 824.

§ 39-4710. Presence of a yellow dot on a motor vehicle shall not provide probable cause. — Nothing in this chapter shall provide a peace officer with probable cause or other legal authority to stop a motor vehicle. Except for the limited authority provided in [section 39-4708, Idaho Code](#), nothing in this chapter shall provide a peace officer with probable cause or other legal authority to search a motor vehicle or its occupants.

History.

[I.C., § 39-4710](#), as added by 2020, ch. 283, § 1, p. 824.

Idaho Code Ch. 47A

• [Title 39](#)», « [Ch. 47A](#) »

Chapter 47A
PERSONAL CARE SERVICES

Sec.

39-A4701 — 39-A4707. [Amended and Redesignated.]

§ 39-A4701 — 39-A4707. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former §§ 39-A4701 to 39-A4707 were amended and redesignated as §§ 39-5601 to 39-5607, respectively, by §§ 1-7 of S.L. 1990, ch. 326.

Chapter 48

IMMUNIZATION

Sec.

39-4801. Immunization required.

39-4802. Exemptions.

39-4803. Immunization registry.

39-4804. Notification to parent or guardian.

39-4805. Idaho childhood immunization policy commission.

§ 39-4801. Immunization required. — Except as provided in [section 39-4802, Idaho Code](#), any child in Idaho of school age may attend grades preschool and kindergarten through twelve (12) of any public, private or parochial school operating in this state if otherwise eligible, provided that upon admission, the parent or guardian shall provide an immunization record to the school authorities regarding the child's immunity to certain childhood diseases. This record, signed by a physician or his representative or another licensed health care professional, shall verify that such child has received, or is in the process of receiving immunizations as specified by the state board of health and welfare, or can effectively demonstrate, through verification in a form approved by the department of health and welfare, immunity gained through prior contraction of the disease.

Immunizations required and the manner and frequency of their administration shall be as prescribed by the state board of health and welfare and shall conform to recognized standard medical practices in the state. The state board of health and welfare, in cooperation with the state board of education and the Idaho school boards association, shall promulgate appropriate rules for the enforcement of the required immunization program and specify reporting requirements of schools, pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

[I.C., \[§ 39-4801\]](#) § 39-4601, as added by 1978, ch. 240, § 1, p. 516; am. and redesign. 1979, ch. 313, § 1, p. 845; am. 1991, ch. 251, § 1, p. 619; am. 1992, ch. 102, § 1, p. 321; am. 2011, ch. 212, § 1, p. 599.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

State board of health and welfare, § 56-1005.

Amendments.

The 2011 amendment, by ch. 212, in the first paragraph, substituted “an immunization record” for “a statement” near the end of the first sentence and substituted “This record” for “This statement shall provide a certificate” and inserted “or another licensed health care professional, shall verify” in the second sentence; and, in the last paragraph, deleted “and regulations” following “rules” in the last sentence.

Compiler’s Notes.

Chapters 240 and 270 of S.L. 1978 each purported to enact a new chapter 46 in title 39. Accordingly, chapter 270 was codified as chapter 46 of title 39, while chapter 270 was codified as chapter 48 of title 39 through the use of brackets. Chapter 47 of title 39 was added by S.L. 1978, chapter 155. The redesignation of the sections enacted by S.L. 1978, chapter 240 was made permanent by S.L. 1979, chapter 313.

The Idaho school boards association was founded in 1942 to assist locally elected school board members with policy services, publications, and legislative advocacy. See <http://www.idsba.org>.

RESEARCH REFERENCES

ALR. — Power of court or other public agency to order vaccination over parental religious objection. 94 A.L.R.5th 613.

§ 39-4802. Exemptions. — (1) Any minor child whose parent or guardian has submitted to school officials a certificate signed by a physician licensed by the state board of medicine stating that the physical condition of the child is such that all or any of the required immunizations would endanger the life or health of the child shall be exempt from the provisions of this chapter.

(2) Any minor child whose parent or guardian has submitted a signed statement to school officials stating their objections on religious or other grounds shall be exempt from the provisions of this chapter.

History.

I.C., [§ 39-4802] § 39-4602, as added by 1978, ch. 240, § 1, p. 516; am. and redesign. 1979, ch. 313, § 2, p. 845.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Compiler's Notes.

Chapters 240 and 270 of S.L. 1978 each purported to enact a new chapter 46 in title 39. Accordingly, chapter 270 was codified as chapter 46 of title 39, while chapter 270 was codified as chapter 48 of title 39 through the use of brackets. Chapter 47 of title 39 was added by S.L. 1978, chapter 155. The redesignation of the sections enacted by S.L. 1978, chapter 240 was made permanent by S.L. 1979, chapter 313.

Section 2 of S.L. 1978, ch. 240 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

§ 39-4803. Immunization registry. — (1) The department of health and welfare shall provide for the establishment of a voluntary registry of the immunization status of Idaho children against childhood diseases. The registry shall be maintained and its data disclosed as set out herein to further the following purposes:

- (a) To make immunizations readily available to every Idaho citizen that desires to have their child immunized;
- (b) To increase the voluntary immunization rate in Idaho to the maximum extent possible without mandating such immunizations;
- (c) To recognize and respect the rights of parents and guardians to make health care decisions for their children; and
- (d) To provide for timely reminders to parents of children in the registry.

(2) The name of a child and information relating to the immunization status of that child shall be collected and included in the registry unless a parent, guardian or other person legally responsible for the care of the child chooses not to have the child included in the registry upon a specified written statement. Such statement may not be part of a general authorization or release. The registry shall contain the following information for each child:

- (a) The child's name, address and birth date;
- (b) The name and address of each parent of the child;
- (c) The month, day, year and type of each immunization that has been administered to the child;
- (d) The name, address and phone number of each provider that has administered an immunization to the child;
- (e) If requested by a parent or guardian, any statement made pursuant to subsection (4) of this section; and
- (f) Other information as authorized or requested by a parent or guardian.

(3) The department of health and welfare shall only disclose information relating to an individual child in the registry to the following upon a specific request:

- (a) Employees of the health district in which the child resides or seeks medical services;
- (b) Health records staff of the school or school district in which the child is enrolled;
- (c) The operator of a licensed daycare facility in which the child is enrolled;
- (d) Persons who are legally responsible for the long-term care of the child, including operators of licensed ICF/ID's and residential or assisted living facilities, adoptive and foster parents and a guardian appointed pursuant to chapter 5, title 15, Idaho Code;
- (e) Any health care provider rendering treatment to the child, and the provider's agents;
- (f) Any person possessing a lawful release, properly executed by the child's parent or guardian;
- (g) A parent of the child;
- (h) Any hospital where the child is receiving care; or
- (i) The Idaho health data exchange.

(4) A parent or guardian of the child shall have free and open access to all information in the registry that relates to their child or themselves. Upon the written request of a parent or guardian, the department of health and welfare shall:

- (a) Cause all information relating to the child to be removed from the registry;
- (b) Include in the registry the statement of a physician or parent pursuant to section 39-4802(2) or 39-1118(2), Idaho Code.

(5) All information contained in the registry or disclosed from it is confidential and may not be sold and may only be disclosed as specifically authorized in this section. A person or entity to whom information is

disclosed from the registry may not thereafter disclose it to others except in accordance with state and federal laws applicable to the use of protected health information. Any person who discloses or authorizes disclosure of any information contained in the registry, except as authorized in this section, is guilty of a misdemeanor and is liable for civil damages in the amount of one hundred dollars (\$100) for each violation.

History.

I.C., § 39-4803, as added by 1999, ch. 347, § 1, p. 926; am. 2000, ch. 274, § 118, p. 799; am. 2010, ch. 235, § 28, p. 542; am. 2010, ch. 336, § 1, p. 889; am. 2015, ch. 253, § 1, p. 1057.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

ICF/ID, § 39-1301.

Amendments.

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 235, substituted “operators of licensed ICF/ID’s” for “operators of licensed ICF/MR’s” in paragraph (3)(d).

The 2010 amendment, by ch. 336, in the introductory paragraphs in subsections (1) through (3), substituted “shall” for “may”; in the introductory paragraph in subsection (2), rewrote the first sentence, which formerly read: “The name of a child or information relating to the immunization status of that child may be collected or included in the registry only upon the separate and specific written authorization of a parent, guardian or other person legally responsible for the care of the child,” and in the second sentence, substituted “statement” for “authorization”; and in paragraph (3)(c), substituted “daycare facility” for “child care facility.”

The 2015 amendment, by ch. 253, added paragraph (3)(i); deleted “and any databases or files of other entities or persons to which information in

the database has been disclosed” at the end of paragraph (4)(a); and added “except in accordance with state and federal laws applicable to the use of protected health information” at the end of second sentence of subsection (5).

§ 39-4804. Notification to parent or guardian. — (1) Before an immunization is administered to any child in this state, the parent or guardian of the child shall be notified that:

- (a) Immunizations are not mandatory and may be refused on religious or other grounds;
- (b) Participation in the immunization registry is voluntary;
- (c) The parent or guardian is entitled to an accurate explanation of the complications known to follow such immunization.

(2) At the time information is initially collected regarding any child for entry into the registry created pursuant to this chapter, the parent or guardian shall be notified that:

- (a) They have the right under Idaho law to submit a statement pursuant to the provisions of sections 39-1118 and 39-4802, Idaho Code, which exempts them from any requirement to have information regarding the child entered into the registry;
- (b) At any time they have the right to remove any information from the registry regarding the child; and
- (c) Immunizations are not mandatory and may be refused on religious or other grounds.

(3) The decision of a parent or guardian to:

- (a) Submit a statement pursuant to the provisions of either section 39-1118(2) or 39-4802(2), Idaho Code;
- (b) Remove any information regarding the child from the registry pursuant to the provisions of [section 39-4803\(4\), Idaho Code](#); or
- (c) Refuse the immunization on religious or other grounds;

shall not be used in any manner against the interests of the parent or guardian in any administrative, civil or criminal action.

History.

I.C., § 39-4804, as added by 1999, ch. 347, § 3, p. 926; am. 2010, ch. 336, § 2, p. 889.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 336, designated the introductory paragraph as subsection (1) and redesignated former subsections (1) through (3) as paragraphs (1)(a) through (1)(c); and added subsections (2) and (3).

§ 39-4805. Idaho childhood immunization policy commission. — (1) There is hereby created in the department of health and welfare the Idaho childhood immunization policy commission. The purpose of the commission is to evaluate policies regarding childhood immunization in Idaho and make recommendations to the board of health and welfare on policy and to the Idaho legislature on legislative action to increase immunization rates.

(2) The commission shall be composed of eight (8) regular members and two (2) ex officio members: (a) One (1) representative of the department of health and welfare, division of public health, appointed by the director of the department; (b) One (1) representative of Idaho public health districts, appointed by the Idaho association of public health district directors; (c) One (1) member appointed by the Idaho primary care association; (d) One (1) member appointed by the Idaho hospital association;

(e) One (1) member appointed by the Idaho academy of family physicians; (f) One (1) member appointed by the Idaho chapter of the American academy of pediatrics; (g) One (1) member appointed by the Idaho immunization coalition; (h) One (1) member appointed by the Idaho medical association;

(i) One (1) member of the Idaho senate who will serve as an ex officio member of the commission, appointed by the president pro tempore of the senate; and (j) One (1) member of the Idaho house of representatives who will serve as an ex officio member of the commission, appointed by the speaker of the house of representatives.

Each member of the commission shall serve at the pleasure of the person responsible for the member's appointment. Members of the commission shall not be paid for their service or be entitled for reimbursement for travel expenses, except that members of the Idaho legislature serving as ex officio members of the commission shall be reimbursed for their vouched travel expenses associated with their service on the commission in a manner consistent with policy for other state officers and employees.

(3) The commission shall meet on or before October 1, 2010, and shall meet not less than once per each calendar year thereafter. At its initial meeting, the commission shall elect a chair, a vice chair and a secretary from among its members. These officers shall serve for terms of one (1) year and may be elected for successive terms. Meetings of the commission shall be held in Boise. Members may participate in meetings through electronic means.

(4) The department of health and welfare shall provide to the commission a suitable meeting location and reasonable clerical support.

(5) The duties and responsibilities of the commission are to:

(a) Review existing provisions of the Idaho Code and rules of the department of health and welfare regarding childhood immunization; and

(b) Make recommendations to the Idaho legislature for legislation and to the board of health and welfare for rulemaking on: (i) Improving Idaho's childhood immunization rates;

(ii) The immunization requirements for children attending daycare and school; (iii) The Idaho immunization reminder information system;

(iv) Public and private partnerships to improve immunization rates; and (v) Other states best practices on improving immunization rates.

(c) Make recommendations to public agencies, health care providers and others regarding policies and practices that are designed to improve Idaho's childhood immunization rates.

History.

I.C., § 39-4805, as added by 2010, ch. 134, § 1, p. 285.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Compiler's Notes.

Websites for organizations referenced in subsection (2):

Idaho primary care association — <http://idahopca.org> Idaho hospital association — <https://www.teamiha.org> Idaho academy of family physicians — <http://idahofamilyphysicians.org> Idaho chapter of the American academy of pediatrics — <http://www.idahoaap.org> Idaho immunization coalition — <http://idahoimmune.org> Idaho medical association — <https://www.idmed.org> Effective Dates.

Section 2 of S.L. 2010, ch. 134 provided: “The provisions of this act shall be null, void and of no force and effect on and after July 1, 2014.” Section 1 of S.L. 2014, Chapter 50 repealed section 2 of S.L. 2010, Chapter 134, effective July 1, 2014.

Chapter 49

IDAHO HEALTH PLANNING ACT

Sec.

39-4901. Purpose and policy.

39-4902. Definitions.

39-4903. Cooperative agreements — Certification.

39-4904. Judicial review.

§ 39-4901. Purpose and policy. — It is the intent of the legislature to provide to all of Idaho residents a quality health care system for a reasonable cost and to prevent the deterioration of such system by the duplication of services or the introduction of new categories of services that are not necessary to their health. It is further the intent of the legislature to promote cooperation among health care providers in health planning activities and to provide access to necessary care for all who require it. It is hereby declared that it is in the public interest of the state, to provide for the relief from penalties of state and federal law, cooperative planning in health care that is likely to benefit the residents of the state.

History.

I.C., § 39-4901, as added by 1994, ch. 283, § 2, p. 883.

STATUTORY NOTES

Prior Laws.

Former §§ 39-4901 to 39-4914, as enacted by S.L. 1980, ch. 121, § 1 and amended by S.L. 1982, ch. 55, § 1, expired on their own terms on July 1, 1983 (see former § 39-4914) and were repealed by S.L. 1994, ch. 283, § 1, effective July 1, 2004.

§ 39-4902. Definitions. — As used in this chapter:

(1) “Cooperative agreement” means a written agreement between two (2) or more health care providers for the sharing, allocation or referral of patients, or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic, therapeutic or procedures or other services customarily offered by health care providers.

(2) “Certificate of public advantage” means a document issued by the attorney general to parties to a cooperative agreement, verifying that the attorney general declares that the purposes and objectives of the cooperative agreement meet the standards for such agreements set forth by statute.

(3) “Health care provider” means any person or health care facility licensed, registered, certified, permitted or otherwise officially recognized by the state to provide health care services in this state; or, in the case of a freestanding outpatient facility, one for which a facility fee is charged for health care services performed within.

History.

I.C., § 39-4902, as added by 1994, ch. 283, § 2, p. 883.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 39-4902 was repealed. See Prior Laws, § 39-4901.

§ 39-4903. Cooperative agreements — Certification. — (1) A health care provider may negotiate and enter into cooperative agreements with other health care providers in the state if the likely benefits resulting from the agreements outweigh the disadvantages attributable to a reduction in competition that may result from such agreements.

(2) Parties to a cooperative agreement may apply to the Idaho attorney general for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement.

(3) The attorney general shall review the application in accordance with the standards set forth in subsection (4) of this section and may hold a public hearing in accordance with rules adopted by the attorney general under chapter 52, title 67, Idaho Code. The attorney general shall grant or deny the application within sixty (60) days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The attorney general shall furnish a copy of the decision to the applicants and any intervenor.

(4) The attorney general shall issue a certificate of public advantage for a cooperative agreement if he determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(5) In evaluating the potential benefits of a cooperative agreement, the attorney general shall consider whether one (1) or more of the following benefits may result from such agreement:

- (a) The quality of health care provided to the consumers in the state will be enhanced;
- (b) A hospital, if any, and other health care facilities that customarily serve the communities in the area likely affected by the cooperative agreement will be preserved;

(c) Services provided by the parties to the cooperative agreement will gain cost efficiency;

(d) The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve;

(e) Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided.

(6) The attorney general's evaluation of any disadvantages attributable to any reduction in competition likely to result from the cooperative agreement may include, but need not be limited to, the following:

(a) The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, hospital provider organizations, persons performing utilization review, or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers;

(b) Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement;

(c) Whether any arrangements that are less restrictive to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition.

(7) Participants in an approved cooperative agreement issued under the provisions of this section are immune from civil enforcement action and criminal prosecution for actions that might otherwise violate antitrust laws of the state of Idaho taken in furtherance of the cooperative agreement. Nothing in this section shall limit the authority of the attorney general to initiate civil enforcement or criminal prosecution if he determines that the health care providers have exceeded the scope of the cooperative agreement approved under this act.

(8) The attorney general may request periodic written updates of the progress of the approved cooperative agreement. If updates are requested, the attorney general shall specify the intervals at which they must be submitted, which shall not be less than every ninety (90) days.

(9) Nothing in this act shall obligate health care providers to submit a request for approval of a cooperative agreement as set forth under the provisions of this section. Any person who implements any cooperative action or agreement without securing the approval of the attorney general under the provisions of this section is subject to any civil or criminal enforcement action for violations that may result from this action.

(10) It is the intent of this section to require the state of Idaho, through the office of the attorney general, to provide direction, supervision and control over approved cooperative agreements entered into under the provisions of this section. To achieve the goals specified in this section, this state direction, supervision and control of cooperative agreements will provide state action immunity under federal antitrust laws to health care providers who participate in discussions or negotiations authorized in this section, and to persons authorized by such persons to implement cooperative agreements.

(11) The attorney general may adopt rules for the implementation of this act, including rules establishing procedures and criteria for the review and evaluation of proposed cooperative agreements under this act. Rules adopted shall ensure that there is opportunity for public comment during the review and evaluation of proposed cooperative agreements.

(12) If the attorney general determines that the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweighs any disadvantages attributable to any actual or potential reduction in competition resulting from the cooperative agreement, he may revoke the certificate of public advantage governing the agreement and, if revoked, shall so notify the holders of the certificate. A holder of a certificate of public advantage whose certificate is revoked by the attorney general may contest the revocation by sending a written request for a hearing to the attorney general within ten (10) days after receipt of the notice of revocation.

(13) If a party to a cooperative agreement that is issued a certificate of public advantage terminates its participation in the agreement, the party shall file a notice of termination with the attorney general within thirty (30) days after the termination takes effect. If all parties to the cooperative

agreement terminate their participation in the agreement, the attorney general shall revoke the certificate of public advantage for the agreement.

(14) The attorney general shall maintain files on all cooperative agreements for which certificates of public advantage are issued and that are in effect.

History.

I.C., § 39-4903, as added by 1994, ch. 283, § 2, p. 883.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 39-4903 was repealed. See Prior Laws, § 39-4901.

Compiler's Notes.

The words “this act” in subsections (7), (9), and (11) refer to S.L. 1994, ch. 283, which is compiled as §§ 39-4901 through 39-4904.

RESEARCH REFERENCES

A.L.R. — Application of Clayton Act to Mergers and Acquisitions of Hospitals and Healthcare Systems (15 U.S.C. §§ 12 to 27). 13 A.L.R. Fed. 3d 7.

§ 39-4904. Judicial review. — Any applicant or intervenor aggrieved by a decision of the attorney general in granting or denying an application for a certificate of public advantage, refusing to act on such application or termination of a certificate of public advantage, is entitled to judicial review of the decision in accordance with chapter 52, title 67, Idaho Code.

History.

I.C., § 39-4904, as added by 1994, ch. 283, § 2, p. 883.

STATUTORY NOTES

Prior Laws.

Former § 39-4904 was repealed. See Prior Laws, § 39-4901.

Chapter 50

EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKER ACT

Sec.

39-5001. Policy.

39-5002. Definitions.

39-5003. Service centers.

39-5004. Site selection.

39-5005. Eligibility and fees.

39-5006. Grants and gifts.

39-5007. Reports of each center.

39-5008. Discrimination prohibited.

39-5009. Displaced homemaker account — Fees on filing of divorce action.

§ 39-5001. Policy. — The policy of the state of Idaho is hereby declared to be a recognition of the increasing number of persons in the state who, having fulfilled the valuable role of homemaker, find themselves displaced because of death or disability of spouse, or divorce or other loss of family income. As a consequence, displaced homemakers have an insufficient income; high rate of unemployment due to age, lack of paid work experience and discrimination; and limited opportunities to collect funds of assistance from social security, unemployment compensation, medicaid or other health insurance benefits, or pension plans of the spouse. This chapter seeks to coordinate efforts by state and local public agencies in cooperation with private agencies and organizations to assist displaced homemakers to continue as productive citizens, even though their role has necessarily changed.

History.

I.C., § 39-4901 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 61, p. 82.

STATUTORY NOTES

Compiler's Notes.

Two 1980 acts, chapters 121 and 333, purported to create a new chapter 49 in Title 39. Chapter 121 was compiled as Title 39, ch. 49 (§§ 39-4901 to 39-4914) and has since been repealed and replaced by current §§ 39-4901 to 39-4904. Chapter 333 was codified by the compiler as chapter 50 of Title 39 through the use of brackets. Sections 39-5002 and 39-5003 were amended and redesignated in 1999 and 1982, respectively, to unique code numbers. The remaining sections enacted by S.L. 1980, ch. 333 were permanently redesignated by S.L. 2005, chapter 25.

§ 39-5002. Definitions. — For purposes of this chapter:

(1) “Displaced homemaker” means a person who: (a) Has worked in the home providing household services for family members, but who has lost the primary source of economic support and who must gain employment skills in order to earn a living; or (b) Is a single parent with primary financial and custodial responsibility for supporting dependent children and who must gain employment skills in order to earn a living.

(2) “Administrator” means the administrator of the division of career technical education.

History.

I.C., § 39-4902 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 1999, ch. 329, § 23, p. 852; am. 2000, ch. 292, § 1, p. 1007; am. 2016, ch. 25, § 37, p. 35.

STATUTORY NOTES

Cross References.

State board for career-technical education, § 33-2202.

Amendments.

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” at the end of subsection (2).

Compiler’s Notes.

This section was enacted as § 39-4902 by S.L. 1980, ch. 333, § 1, p. 859; however, § 23 of S.L. 1999, ch. 329 amended the section as § 39-5002.

§ 39-5003. Service centers. — The administrator is authorized to establish multipurpose service centers for displaced homemakers. Each center shall have an advisory board appointed by the administrator in consultation with the director of the center. Such board shall consist of individuals representing displaced homemakers, organizations and agencies providing services beneficial to displaced homemakers, and the general public.

Each center shall include the following services:

- (a) Job counseling services designed for a displaced homemaker;
- (b) Job training and placement services developed in cooperation with public and private employers to train displaced homemakers for available jobs in the public and private sectors, taking into account the skills and job experiences of a homemaker and to assist displaced homemakers in gaining admission to existing public and private job training programs;
- (c) Health education and counseling services with respect to general principles of preventative health care, mental health, alcohol and drug addiction and other related health care matters;
- (d) Financial management services which provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans and other related financial matters; and
- (e) Educational services including information about courses offering credit through secondary and postsecondary education programs and information about other services determined to be of interest and benefit to displaced homemakers.

History.

I.C., § 39-4903 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 1982, ch. 20, § 1, p. 24.

STATUTORY NOTES

Compiler's Notes.

This section was enacted as § 39-4903 by S.L. 1980, ch. 333, § 1, p. 859; however, § 1 of S.L. 1982, ch. 20 amended the section as § 39-5003.

§ 39-5004. Site selection. — (a) In selecting sites for the centers established under this chapter, the administrator shall consider:

- (1) The needs of each region of the state for a center;
- (2) The needs of both urban and rural communities; and
- (3) The availability of existing facilities adaptable for use as a center.

(b) The administrator may select a public or nonprofit private organization to administer the centers.

(c) The administrator is authorized to enter into contracts with and make grants to the organizations selected for the purpose of establishing and administering centers under this chapter.

(d) The administrator shall cooperate with other state, local and federal agencies to coordinate, through the service centers, all programs applicable to displaced homemakers and to avoid duplication of services.

(e) To the greatest extent possible, the staff of the service centers established under this chapter, including supervisory, technical and administrative positions, shall be filled by displaced homemakers. Where necessary, potential staff members shall be provided with on-the-job training.

History.

I.C., § 39-4904 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 62, p. 82.

§ 39-5005. Eligibility and fees. — The administrator with the advice of the staff at the centers, shall promulgate rules concerning the eligibility of persons to receive assistance through the multipurpose service centers. A sliding fee may be charged for services at the discretion of the director of the center.

History.

I.C., § 39-4905 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 63, p. 82.

§ 39-5006. Grants and gifts. — The director of the center may, with approval of the administrator, apply for and accept any funds, grants, gifts or services made available by any agency or department of the federal government or any private agency or individual, which funds shall be used to carry out the total program of the centers.

History.

I.C., § 39-4906 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 64, p. 82.

§ 39-5007. Reports of each center. — The director of each center shall report to the administrator or his/her designee, and shall evaluate the effectiveness of the job training, placement and service to displaced homemakers, including the number of persons trained, the number of persons placed in employment, follow-up data on such persons, the number of persons served by the various service programs, and cost effectiveness of the various components of the center. The administrator shall report annually to the education committees of the house of representatives and the senate of the legislature on the status of the displaced homemaker program. The report shall be filed not later than the fifteenth legislative day and in addition to compilations of the information received from each center, may include recommendations of the administrator relating to the program.

History.

I.C., § 39-4907 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 65, p. 82.

§ 39-5008. Discrimination prohibited. — No person shall, on the ground of sex, age, race, color, religion, national origin or disability, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity made available under this chapter.

History.

I.C., § 39-4908 as added by 1980, ch. 333, § 1, p. 859; am. and redesign. 2005, ch. 25, § 66, p. 82; am. 2010, ch. 235, § 29, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted “origin or disability” for “origin or handicap.”

§ 39-5009. Displaced homemaker account — Fees on filing of divorce action. — (1) There is hereby created in the state operating fund the displaced homemaker account. All fees collected pursuant to subsection (2) of this section shall be deposited in the account. All moneys in the account shall be available for appropriation to the state board for career technical education for the purposes of this chapter.

(2) In addition to any other fees imposed for filing an action for divorce in the district court, there shall be collected a fee of twenty dollars (\$20.00) for each divorce action. The clerk of the district court shall remit such fees, separately identified, to the state treasurer for deposit in the displaced homemaker account. Fees shall be remitted to the state treasurer at the same time as other court fees are remitted.

History.

I.C., § 39-5009, as added by 1982, ch. 187, § 1, p. 505; am. 1999, ch. 329, § 24, p. 852; am. 2016, ch. 25, § 38, p. 35.

STATUTORY NOTES

Cross References.

State board for career-technical education, § 33-2202.

Amendments.

The 2016 amendment, by ch. 25, substituted “state board for career technical education” for “state board for professional-technical education” near the end of subsection (1).

Chapter 51

FAMILY SUPPORT AND IN-HOME ASSISTANCE

Sec.

39-5100. Legislative findings.

39-5101. Purpose.

39-5102. Definitions.

39-5103. Standards for the provision of financial assistance.

39-5104. Eligibility.

39-5105. Discontinuance of assistance.

39-5106. Short title.

§ 39-5100. Legislative findings. — The legislature of the state of Idaho finds that:

(1) Families are the major providers of support, care, information, training, and other services to their family members with developmental disabilities.

(2) Families with individuals who have developmental disabilities may experience extraordinary financial outlays, physical and emotional challenges, and daily stress.

(3) Failure to provide the necessary services and supports to families with a member with developmental disabilities can result in admission of the individual to institutional care.

(4) Flexible and coordinated support and assistance to families avoids duplication of services, uses existing resources more efficiently, and prevents gaps in services to families.

(5) A family's ability to make informed decisions regarding in-home or out-of-home living arrangements for a member who has a developmental disability is critical to the quality and cost-effective care of their family member.

(6) Family support and in-home assistance promotes and enhances the family's capacity to provide care.

(7) Family support and in-home assistance stimulates the formation of community supports to use public dollars more efficiently.

Therefore, it is in the interest of the state of Idaho to provide in-home assistance for families for supports that enable family members with developmental disabilities to reside at home.

History.

I.C., § 39-5100, as added by 1997, ch. 33, § 2, p. 56.

§ 39-5101. Purpose. — This act authorizes a program of financial assistance to eligible families who agree to carry out home-based support for their family members with developmental disabilities.

History.

I.C., § 39-5101, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 3, p. 56.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1981, ch. 234, which is compiled as §§ 39-5101 to 39-5106.

§ 39-5102. Definitions. — As used in this chapter:

- (1) “Department” means the Idaho department of health and welfare.
- (2) “Developmental disability” means a chronic disability of an individual which appears before the age of twenty-two (22) years of age and:
 - (a) Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or a condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and
 - (b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
 - (c) Reflects the need for a combination and sequence of special, interdisciplinary treatment or other services which are of lifelong or extended duration and individually planned and coordinated.
- (3) “Director” means the director of the Idaho department of health and welfare.
- (4) “Family” means a group of interdependent persons residing in the same household and includes an individual with a developmental disability and one (1) or more of the following:
 - (a) A birth or adoptive mother or father, stepparent, brother, sister or any combination; or
 - (b) Extended blood relatives, such as a grandparent, aunt, uncle, nephew or niece; or
 - (c) Legal guardian.

The term “family” does not include paid providers of care.

(5) “In-home assistance application” means a written document describing the needs of an individual with developmental disabilities and specifying the services or supports required.

(6) “Institution” means any public or private residential facility which is licensed in the state of Idaho for the purpose of providing care and treatment for individuals with developmental disabilities.

History.

I.C., § 39-5102, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 4, p. 56; am. 2010, ch. 235, § 30, p. 542.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2010 amendment, by ch. 235, in paragraph (2)(a), substituted “intellectual disability” for “mental retardation”; and redesignated former subsection (6) as subsection (4), redesignating the subsequent subsections accordingly.

§ 39-5103. Standards for the provision of financial assistance. — The director of the Idaho department of health and welfare shall have the power and it shall be his duty to promulgate appropriate rules necessary to implement and enforce the following standards for the provision of in-home assistance:

(1) Financial assistance provided under this chapter shall not exceed two hundred fifty dollars (\$250) per month per individual, except that this limit may be waived by the department in cases of extraordinary need.

(2) The amount of a grant of assistance shall be made based upon the need for services as specified in [section 39-5103\(4\), Idaho Code](#), without regard to the family's income or eligibility for any other program administered by the department.

(3) Receipt of supports will be determined on an individual family basis. Support priorities will be determined with consideration for the following criteria: (a) Families of individuals with a developmental disability who will be able to return to a home setting from an institution and to those families for whom supports will prevent placement of the member with a developmental disability in an institution; (b) Severity of consequences without supports; (c) Urgency of need;

(d) Availability of funds.

(4) Assistance moneys may be used for the following when no other assistance is available: (a) Diagnostic and evaluative procedures;

(b) Purchase of special equipment;

(c) Specialized therapies;

(d) Special diets;

(e) Medical and dental care not covered under the family's health insurance or other publicly funded programs; (f) Home health or personal assistance services; (g) Counseling for the individual or family, including behavior management; (h) Respite care or out of the ordinary expenses related to supervised care according to the approved in-home assistance application, including necessary related sibling care; (i) Environmental

adaptations and technical assistance as necessary to permit successful integration and access; (j) Special clothing including incontinence supplies; (k) Necessary supports for participation in recreational services; (l) Transportation; (m) Housing modifications for the purpose of accessibility or ease in handling; and (n) Similar or related costs.

(5) Families shall choose providers of services.

(6) Assistance moneys shall not be used for the payment of educational or educationally related services which properly are the responsibility of local public schools.

(7) Supports under this chapter shall not replace or reduce other public benefits to families, or be considered as resources or income in any eligibility determination or sliding fee scale.

History.

I.C., § 39-5103, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 5, p. 56.

§ 39-5104. Eligibility. — A family is eligible to participate in the family support and in-home assistance program if the family:

(1) Resides within the state of Idaho; (2) Includes a family member with a developmental disability; (3) Expresses willingness for the family member with a developmental disability to reside at home; (4) Submits an in-home assistance application for the family member with a developmental disability; (5) Obtains the agreed-upon services or equipment; and (6) Accounts for the funds expended for the agreed-upon services and equipment.

History.

I.C., § 39-5104, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 6, p. 56.

§ 39-5105. Discontinuance of assistance. — Assistance may be terminated under the following conditions:

(1) The family or individual requests termination; (2) Death of the individual with a developmental disability; (3) Eligibility criteria are no longer met; or (4) Inadequate funds are available for continuance.

History.

I.C., § 39-5105, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 7, p. 56.

§ 39-5106. Short title. — This chapter shall be known and cited as the “Developmental Disabilities Family Support and In-Home Assistance Act.”

History.

I.C., § 39-5106, as added by 1981, ch. 234, § 1, p. 472; am. 1997, ch. 33, § 8, p. 56.

Chapter 52

DOMESTIC VIOLENCE PROJECT GRANTS

Sec.

39-5201. Declaration of policy.

39-5202. Definitions.

39-5203. Council on domestic violence and victim assistance.

39-5204. Composition.

39-5205. Appointment and term of office.

39-5206. Compensation and expenses.

39-5207. Organization of council — Employment of necessary personnel.

39-5208. Responsibilities and duties.

39-5209. Rules.

39-5210. Eligible projects.

39-5211. Qualifications of applicants.

39-5212. Domestic violence project account.

39-5213. Fee imposed.

§ 39-5201. Declaration of policy. — The legislature finds that domestic violence is an issue of growing concern. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Refuge for victims of domestic violence is essential to provide protection to victims from further abuse and physical harm. Refuge provides temporary safety and resources to victims who may not have access to such things if they remain in abusive situations.

It is the purpose of the legislature in the adoption of this chapter to provide funding for projects in the several areas of the state for the purpose of aiding victims of domestic violence and other crimes.

It is understood that the intention of the provisions of this chapter is not to supersede the authority or responsibilities of agencies of state government responsible for providing services to persons pursuant to the child protective act, crime victims compensation act or adult protective provisions in the Idaho Code.

History.

I.C., § 39-5201, as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 1, p. 1161.

STATUTORY NOTES

Cross References.

Adult abuse, neglect and exploitation act, § 39-5301 et seq.

Child protective act, § 16-1601 et seq.

Crime victims compensation act, § 72-1001 et seq.

Divorce, grounds and defenses, § 32-601 et seq.

Marriage contract, § 32-201 et seq.

Marriage licenses, certificates and records, § 32-401 et seq.

Parent and child, § 32-1001 et seq.

Compiler's Notes.

Two 1982 acts, chapters 181 and 286, purported to create a new chapter 52 in Title 39. Chapter 181 was compiled as Title 39, chapter 52 (§§ 39-5201 to 39-5213) while chapter 286 was designated by the compiler as Title 39, chapter 53 through the use of brackets. The redesignation of the sections enacted by S.L. 1982, chapter 286 was made permanent by S.L. 1991, chapter 329.

§ 39-5202. Definitions. — As used in this chapter:

(1) “Domestic violence” means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member.

(2) “Family or household member” means one who is related by blood, marriage, or who resides or has resided with or has been married to the person committing the domestic violence.

(3) “Safe house” means a place available on an as needed basis for temporary residence to victims of domestic violence and their children.

(4) “Refuge” means a place available on a twenty-four (24) hour, seven (7) days a week basis, to provide temporary residence to victims of domestic violence and their children.

(5) “Crisis line” means an emergency twenty-four (24) hour telephone service staffed by persons able to provide information and referral to community services.

(6) “Council” means the Idaho council on domestic violence and victim assistance created in [section 39-5203, Idaho Code](#).

History.

[I.C., § 39-5202](#), as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 2, p. 1161.

§ 39-5203. Council on domestic violence and victim assistance. — (1) The Idaho council on domestic violence and victim assistance is hereby established. The council shall be the advisory body for programs and services affecting victims of domestic violence and other crimes in Idaho.

(2) For budgetary purposes and for administrative support purposes, the council shall be assigned, by the governor, to a department or office within the state government.

History.

I.C., § 39-5203, as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 3, p. 1161.

§ 39-5204. Composition. — The council shall consist of seven (7) members appointed by the governor. At least one (1) member shall reside in each of the seven (7) [six (6)] substate regions established pursuant to **section 39-104, Idaho Code**. Members shall be representative of persons who have been victims of domestic violence, care providers, law enforcement officials, medical and mental health personnel, counselors, and interested and concerned members of the general public.

History.

I.C., § 39-5204, as added by 1982, ch. 181, § 1, p. 469.

STATUTORY NOTES

Compiler's Notes.

The bracketed inserted was added by the compiler to reflect the six substate regions created by the department of environmental quality pursuant to § 39-104; Coeur d'Alene, Lewiston, Boise, Idaho Falls, Pocatello, and Twin Falls regions.

§ 39-5205. Appointment and term of office. — Each member of the council shall be appointed for a term of three (3) years, except that of the members first appointed; two (2) shall be appointed for a term of one (1) year, two (2) shall be appointed for a term of two (2) years, and three (3) shall be appointed for a term of three (3) years. If a vacancy occurs, a new member shall be appointed in accordance with the provisions of the original appointment for the unexpired portion of the vacated term. Members may be replaced because of poor attendance, lack of participation in the council's work, or malfeasance in office.

History.

I.C., § 39-5205, as added by 1982, ch. 181, § 1, p. 469.

§ 39-5206. Compensation and expenses. — Members of the council shall be entitled to receive actual and necessary expenses plus compensation as provided in [section 59-509\(g\), Idaho Code](#).

History.

[I.C., § 39-5206](#), as added by 1982, ch. 181, § 1, p. 469.

§ 39-5207. Organization of council — Employment of necessary personnel. — (1) The council shall annually designate one (1) of its members to serve as chairman and one (1) member to serve as vice chairman, who shall act as chairman in the chairman's absence. The chairman shall call meetings as provided in the rules of the council.

(2) The council shall adopt and amend rules governing its proceedings, activities and organization including, but not limited to, provisions governing a quorum, procedure, frequency and location of meetings, and establishment, functions and membership of council committees.

(3) The council may employ and shall fix the compensation, subject to provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary including, but not limited to, an administrator, who shall be designated as the executive director of the council and who shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

History.

I.C., § 39-5207, as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 4, p. 1161.

§ 39-5208. Responsibilities and duties. — The council shall:

- (1) Establish standards for projects applying for grants from the council under this chapter;
- (2) Disseminate information on availability of funds and the application process;
- (3) Receive grant applications for the development and establishment of projects for victims of domestic violence and certain other crimes;
- (4) Distribute funds after approval of projects meeting council standards;
- (5) Assess, review and monitor the services and programs being provided for victims of domestic violence and other crimes under this chapter;
- (6) Monitor programs and services for victims of domestic violence and other crimes to assure nonduplication of services and to encourage efficient and coordinated use of resources in the provision of services;
- (7) Compile data on the services and programs provided to victims of domestic violence and other crimes and the geographic incidence of domestic violence and other crimes in this state; and
- (8) Submit annual reports to the governor and the legislature.

History.

I.C., § 39-5208, as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 5, p. 1161.

§ 39-5209. Rules. — The council shall promulgate, adopt and amend rules and criteria to implement the provisions of this chapter regarding applications and grants for domestic violence project funding and for funding under any other grant program administered by the council. Such promulgation, adoption and amendment shall be in compliance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 39-5209, as added by 1982, ch. 181, § 1, p. 469; am. 2000, ch. 343, § 6, p. 1161.

§ 39-5210. Eligible projects. — To be eligible for domestic violence grants pursuant to this chapter, a project must provide a safe house or refuge and a crisis line, except in the case of a project providing services to batterers. No funds may be granted to batterer programs from the domestic violence project account which are derived from marriage license or divorce fees. Other services which may be provided include, but are not limited to:

(1) Counseling; (2) Educational services for community awareness, for prevention of domestic violence and for the care, treatment and rehabilitation of parties to domestic violence; (3) Support groups; (4) Assistance in obtaining legal, medical, psychological or vocational services.

History.

I.C., § 39-5210, as added by 1982, ch. 181, § 1, p. 469; am. 1990, ch. 243, § 1, p. 695; am. 1992, ch. 51, § 1, p. 156; am. 2000, ch. 343, § 7, p. 1161.

STATUTORY NOTES

Cross References.

Domestic violence project account, § 39-5212.

§ 39-5211. Qualifications of applicants. — To qualify for domestic violence grants under the provisions of this chapter, an applicant must:

- (1) Propose to operate and provide an eligible project;
- (2) Be a private, nonprofit corporation of the state of Idaho, or a public entity of the state of Idaho;
- (3) Provide matching moneys equal to twenty-five percent (25%) of the amount of the grant. The applicant may contribute to or provide the required local matching funds. The value of in-kind contributions and volunteer labor from the community may be computed and included as part of the local matching requirement;
- (4) Require persons employed by or volunteering services to the project to maintain the confidentiality of any information that would identify individuals served by the project; such information identifying individuals served by the project shall be subject to disclosure according to chapter 1, title 74, Idaho Code;
- (5) Require victims to reimburse the project monetarily or through volunteer efforts for services provided as they are able to do so. Minimum reimbursement may be established by the council, with a sliding scale of reimbursement based on the victim's ability to pay;
- (6) Provide a policy of nondiscrimination in its admissions and provision of services on the basis of race, religion, gender, color, age, marital status, national origin or ancestry.

History.

I.C., § 39-5211, as added by 1982, ch. 181, § 1, p. 469; am. 1990, ch. 213, § 45, p. 480; am. 2000, ch. 343, § 8, p. 1161; am. 2015, ch. 141, § 94, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in subsection (4).

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 39-5212. Domestic violence project account. — There is hereby created in the state operating fund the domestic violence project account. Moneys received from the fees imposed by [section 39-5213, Idaho Code](#), and [section 39-6312, Idaho Code](#), shall be credited to the account and shall be perpetually appropriated to the council on domestic violence and victim assistance for grants for domestic violence projects and to meet the costs of maintaining the operation of the council.

Eligible projects shall be given priority by the council based upon an allocation of funds to projects in the seven (7) [six (6)] substate regions established pursuant to [section 39-104, Idaho Code](#), in the proportion that marriage licenses are filed in each region.

History.

[I.C., § 39-5212](#), as added by 1982, ch. 181, § 1, p. 469; am. 1990, ch. 243, § 2, p. 695; am. 2000, ch. 343, § 9, p. 1161.

STATUTORY NOTES

Compiler's Notes.

The bracketed inserted was added by the compiler to reflect the six substate regions created by the department of environmental quality pursuant to § 39-104; Coeur d'Alene, Lewiston, Boise, Idaho Falls, Pocatello, and Twin Falls regions.

§ 39-5213. Fee imposed. — (1) In addition to the fee due to the county recorder of each county of this state under the provisions of [section 31-3205, Idaho Code](#), for the issuance of a marriage license, the recorder shall collect upon presentation of proper identification by the applicants an additional fee of fifteen dollars (\$15.00) for each license issued, which additional fee shall be remitted to the state treasurer for credit to the “domestic violence project account” created in [section 39-5212, Idaho Code](#).

(2) In addition to any other fee imposed for filing an action for divorce in the district court, there shall be collected a fee of twenty dollars (\$20.00) for each divorce action, separately identified, which additional fee shall be remitted to the state treasurer for credit to the domestic violence project account created in [section 39-5212, Idaho Code](#).

History.

[I.C., § 39-5213](#), as added by 1982, ch. 181, § 1, p. 469; am. 1990, ch. 244, § 1, p. 696.

Chapter 53

ADULT ABUSE, NEGLECT AND EXPLOITATION ACT

Sec.

39-5301. Short title.

39-5301A. Declaration of policy.

39-5302. Definitions.

39-5303. Duty to report cases of abuse, neglect or exploitation of vulnerable adults.

39-5303A. Exemption from duty to report — Limited application of exemption.

39-5304. Reporting requirements, investigation, emergency access.

39-5305. Inspections — Right of entry.

39-5306. Supportive services and disclosure.

39-5307. Access to records.

39-5308. Interagency cooperation.

39-5309. Coordination of services.

39-5310. Report to law enforcement — Prosecution.

39-5311. Effect of actions taken pursuant to the natural death act.

39-5312. Rules.

§ 39-5301. Short title. — This chapter shall be known and may be cited as the “Adult Abuse, Neglect and Exploitation Act.”

History.

I.C., § 39-5201, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 2, p. 846.

STATUTORY NOTES

Cross References.

Medical Consent and Natural Death Act, § 39-4501 et seq.

Protection of persons under disability, § 15-5-101 et seq.

Residential care or assisted living act, § 39-3301 et seq.

Legislative Intent.

Section 1 of S.L. 1991, ch. 329 read, “The intent of this legislation is to ensure that the adult population (eighteen (18) years of age and older) in the state of Idaho is protected from abuse, neglect and exploitation through the joint efforts of the Idaho department of health and welfare and law enforcement services. A secondary purpose is to ensure that these protective services are provided in the least restrictive environment to assure maximum independence of the individuals served. Nothing in this act shall be construed to authorize or obligate the department to act or intervene in situations more appropriately addressed in the domestic violence act.”

Compiler’s Notes.

Two 1982 acts, chapters 181 and 286, purported to create a new chapter 52 in Title 39. Chapter 181 was compiled as Title 39, chapter 52 (§§ 39-5201 to 39-5213) while chapter 286 was designated by the compiler as Title 39, chapter 53 through the use of brackets. The redesignation of the sections enacted by S.L. 1982, chapter 286 was made permanent by S.L. 1991, chapter 329.

§ 39-5301A. Declaration of policy. — (1) It is the intent of the adult abuse, neglect and exploitation act to authorize the fewest possible restrictions on the exercise of personal freedom and religious beliefs consistent with a vulnerable adult's need for services and to empower vulnerable adults to protect themselves.

(2) The legislature recognizes that vulnerable adults sometimes experience difficulties managing their own affairs or are unable to protect themselves from abuse, neglect or exploitation. Often, vulnerable adults cannot find others who are able or willing to provide assistance.

(3) The commission is directed to investigate allegations of abuse, neglect, self-neglect or exploitation involving a vulnerable adult, to make appropriate referrals to law enforcement, and to arrange for the provision of necessary services. Further, the commission shall honor a vulnerable adult's freedom of choice and right to self-determination. When it becomes necessary for the commission to assist a vulnerable adult, actions shall be tempered by the requirements of due process and must place the fewest possible restrictions on personal freedom. Services provided under this act are also intended to provide assistance to caregiving families experiencing difficulties in maintaining functionally impaired relatives in the household.

(4) In the process of carrying out its adult protective services responsibilities, the commission is directed to make effective use of multidisciplinary services available through any and all public agencies, community-based organizations, and informal resources.

History.

I.C., § 39-5301A, as added by 1998, ch. 308, § 2, p. 1012; am. 2019, ch. 43, § 1, p. 116.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 43, substituted “adult protective services” for “adult protection” near the beginning of subsection (4).

Compiler's Notes.

The term “this act” in the last sentence in subsection (3) refers to S.L. 1998, Chapter 308, which is compiled as §§ 39-5301A to 39-5303, 39-5304 to 39-5306, and 39-5308 to 39-5310.

§ 39-5302. Definitions. — For the purposes of this chapter:

(1) “Abuse” means the intentional or negligent infliction of physical pain, injury or mental injury.

(2) “Caretaker” means any individual or institution that is responsible by relationship, contract, or court order to provide food, shelter or clothing, or medical or other life-sustaining necessities to a vulnerable adult.

(3) “Commission” means the Idaho commission on aging, established pursuant to chapter 50, title 67, Idaho Code.

(4) “Department” means the Idaho department of health and welfare.

(5) “Emergency” means an exigent circumstance in which a vulnerable adult’s health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.

(6) “Exploitation” means an action that may include, but is not limited to, the unjust or improper use of a vulnerable adult’s financial power of attorney, funds, property, or resources by another person for profit or advantage.

(7) “Neglect” means failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.

(8) “Provider” means an area agency on aging or a person or an entity capable of providing adult protective services, including duly authorized agents and employees.

(9) “Supportive services” means noninvestigatory remedial, social, legal, health, educational, mental health and referral services provided to a vulnerable adult.

(10) “Vulnerable adult” means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment that affects the person’s judgment or

behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

Nothing in this chapter shall be construed to mean a person is abused, neglected, or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this chapter be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

History.

I.C., § 39-5202, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 3, p. 846; am. 1996, ch. 78, § 1, p. 246; am. 1998, ch. 308, § 3, p. 1012; am. 2008, ch. 209, § 2, p. 663; am. 2019, ch. 43, § 2, p. 116.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq

Amendments.

The 2008 amendment, by ch. 209, in subsection (7), substituted “unjust or improper use” for “misuse,” and inserted “financial power of attorney.”

The 2019 amendment, by ch. 43, deleted former subsection (4), which read: “Contractor” means an area agency on aging and its duly authorized agents and employees providing adult protection services pursuant to a contract with the commission in accordance with [section 67-5011, Idaho Code](#). The commission designates area agencies on aging pursuant to [42 U.S.C.A. 3025\(a\)\(2\)\(A\)](#) and may establish by rule when duties or obligations under this chapter may be fulfilled by an area agency on aging”; redesignated former subsections (5) to (8) as present subsections (4) to (7); and added present subsection (8).

Compiler’s Notes.

Two 1982 acts, chapters 181 and 286, purported to create a new chapter 52 in Title 39. Chapter 181 was compiled as Title 39, chapter 52 (§§ 39-

5201 to 39-5213) while chapter 286 was designated by the compiler as Title 39, chapter 53 through the use of brackets. The redesignation of the sections enacted by S.L. 1982, chapter 286 was made permanent by S.L. 1991, chapter 329.

§ 39-5303. Duty to report cases of abuse, neglect or exploitation of vulnerable adults. — (1) Any physician, nurse, employee of a public or private health facility, or a state-licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission. Provided however, that nursing facilities defined in [section 39-1301\(b\), Idaho Code](#), and employees of such facilities shall make reports required under this chapter to the department. When there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult, any person required to report under this section shall also report such information within four (4) hours to the appropriate law enforcement agency.

(2) Failure to report as provided under this section is a misdemeanor subject to punishment as provided in [section 18-113, Idaho Code](#). If an employee at a state licensed or certified residential facility fails to report abuse or sexual assault that has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult as provided under this section, the department shall also have the authority to:

- (a) Revoke the facility's license and/or contract with the state to provide services;
- (b) Deny payment;
- (c) Assess and collect a civil monetary penalty with interest from the facility owner and/or facility administrator;
- (d) Appoint temporary management;
- (e) Close the facility and/or transfer residents to another certified facility;
- (f) Direct a plan of correction;
- (g) Ban admission of persons with certain diagnoses or requiring specialized care;

- (h) Ban all admissions to the facility;
- (i) Assign monitors to the facility; or
- (j) Reduce the licensed bed capacity.

Any action taken by the department pursuant to this subsection shall be appealable as provided in chapter 52, title 67, Idaho Code.

(3) Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its providers.

(4) The commission and its providers shall make training available to officers and employees of financial institutions in identifying and reporting instances of abuse, neglect or exploitation involving vulnerable adults.

(5) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.

(6) Any person who makes a report or allegation in bad faith, with malice or knowing it to be false, shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars (\$500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

History.

I.C., § 39-5203, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1990, ch. 213, § 46, p. 480; am. 1991, ch. 329, § 4, p. 846; am. 1996, ch. 78, § 2, p. 246; am. 1998, ch. 308, § 4, p. 1012; am. 1998, ch. 396, § 1, p.

1240; am. 2000, ch. 274, § 119, p. 799; am. 2018, ch. 56, § 1, p. 141; am. 2019, ch. 43, § 3, p. 116.

STATUTORY NOTES

Amendments.

This section was amended by two 1998 acts which appear to be compatible and have been compiled together. However, the two acts added and redesignated subsections differently. The compiler initially resolved the differences which were permanently resolved by the amendment of this section by S.L. 2000, chapter 274.

The 1998 amendment, by ch. 308, § 4, in subsection (1), at the end of the first sentence, deleted “of health and welfare” following “under this chapter to the department”, added present subsections (2) and (3), redesignated former subsection 2 as present subsection (4), and in present subsection (4), deleted “provision of” following “testimony or,” and inserted “provided in good faith,” and added subsection (5).

The 1998 amendment, by ch. 396, § 1, added the present second sentence in subsection (1); designated the second sentence of former subsection (1) as the first sentence of present subsection (2), and added the second sentence of subsection (2), and its subdivisions, and redesignated former subsection (2) as present subsection (3).

The 2018 amendment, by ch. 56, deleted “ombudsman for the elderly” preceding “osteopath, optometrist” in the first sentence of subsection (1).

The 2019 amendment, by ch. 43, substituted “providers” for “contractors” near the end of subsection (3) and near the beginning of subsection (4).

Compiler’s Notes.

This section, which was enacted as § 39-5203 by S.L. 1982, ch. 286, § 2, was amended and redesignated as § 39-5303 by § 46 of S.L. 1990, ch. 213.

Section 4 of S.L. 1991, ch. 329 stated that “[Section 39-5303, Idaho Code](#), as amended in Section 46, Chapter 286, Laws of 1990 be amended”. However, § 39-5303 was amended by § 46 of ch. 213, Laws of 1990 and not ch. 286.

§ 39-5303A. Exemption from duty to report — Limited application of exemption. — (1) The requirements set forth in [section 39-5303, Idaho Code](#), pertaining to the reporting of instances of abuse, neglect or exploitation of a vulnerable adult to the commission or the department shall not apply to situations involving resident-to-resident contact within public or private health facilities or state licensed or certified facilities which serve vulnerable adults, except in those cases involving sex abuse, death or serious physical injury that jeopardizes the life, health or safety of a vulnerable adult or repeated resident-to-resident physical or verbal altercations, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff are unable to remedy through reasonable efforts.

(2) This exemption applies only to reports involving resident-to-resident abuse that are to be directed to the commission or the department pursuant to [section 39-5303, Idaho Code](#). This exemption shall not limit any other reporting obligation or requirement whether statutory or otherwise.

History.

[I.C., § 39-5303A](#), as added by 2000, ch. 104, § 1, p. 232.

§ 39-5304. Reporting requirements, investigation, emergency access.

— (1) When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate provider. Provided however, that nursing facilities defined in [section 39-1301\(b\), Idaho Code](#), and employees of such facilities shall make reports required under this chapter to the department. If known, the report shall contain the name and address of the vulnerable adult; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse, neglect or exploitation; and any other information that will be of assistance in the investigation.

(2) If the allegations in the report indicate that an emergency exists, the commission or provider must initiate an investigation immediately and initiate contact with the alleged vulnerable adult within twenty-four (24) hours from the time the report is received. All other investigations must be initiated within seventy-two (72) hours from the time the report is received.

(3) The investigation shall include a determination of the nature, extent and cause of the abuse, neglect, or exploitation, examination of evidence and consultation with persons thought to have knowledge of the circumstances, and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.

(4) Where no emergency exists, the commission or provider may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation. If the commission or provider determines that an interview is necessary, the preferred method of interviewing is by means of a personal visit with the vulnerable adult in the adult's dwelling. Alternatively, the interview may occur in the local office of the commission or provider, or by telephone conversation, or by any other means available to the commission or provider. Decisions regarding the method of conducting any interview will be within the discretion of the commission or provider.

(5) Upon completion of an investigation, the commission or provider shall prepare a written report of the investigation. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or

unless the disclosure is made pursuant to the commission's duty to notify law enforcement as required in [section 39-5310, Idaho Code](#), to a request to law enforcement for emergency access, a court order or hearing.

If the abuse, neglect, or exploitation is substantiated to have occurred in a state-certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.

If the commission or provider determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.

History.

[I.C., § 39-5304](#), as added by 1991, ch. 329, § 5, p. 846; am. 1996, ch. 78, § 3, p. 246; am. 1998, ch. 308, § 5, p. 1012; am. 2000, ch. 104, § 2, p. 232; am. 2000, ch. 274, § 120, p. 799; am. 2001, ch. 79, § 1, p. 199; am. 2019, ch. 43, § 4, p. 116.

STATUTORY NOTES

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 104, § 2, at the end of the first and second sentences in subsection (2), added “from the time the report is received”; in subsection (4), deleted the former first sentence which read: “The investigation shall include an interview with the vulnerable adult, if possible”, in the present first sentence, substituted “Where no emergency exists, the commission or contractor may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation, the preferred method of interviewing is” for “The commission or contractor shall conduct the interview, preferably,”, in the present second sentence, substituted “Alternatively,” for “If that is not possible”, and added the last sentence.

The 2000 amendment, by ch. 274, § 120, in the second sentence of subsection (1), deleted “skilled” preceding “nursing facilities”.

The 2019 amendment, by ch. 43, substituted “provider” for “contractor” throughout the section.

Compiler’s Notes.

Former § 39-5304, enacted as § 39-5204 by S.L. 1982, ch. 286, § 2, was amended and redesignated as § 39-5306 by § 8 of S.L. 1991, ch. 329.

§ 39-5305. Inspections — Right of entry. — (1) Upon receiving information that a vulnerable adult is alleged to be abused, neglected, or exploited, the commission or provider shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate. In making the investigation, the commission or provider shall use its own resources and may enlist the cooperation of peace officers. In an emergency, any authorized commission employee or provider shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult and shall receive the peace officer's assistance. Assistance in an emergency may include entry on private or public property where a vulnerable adult is allegedly subject to abuse, neglect or exploitation, and the removal and transportation of the vulnerable adult to a medical facility, care-providing facility, or other appropriate and safe environment.

(2) In a nonemergency, any peace officer may cooperate with an authorized commission employee or provider in ensuring the safety of a vulnerable adult who has been abused, neglected or exploited, including a vulnerable adult living in a condition of self-neglect. Assistance shall be provided only with the consent of the vulnerable adult or his legal representative.

(3) For the purposes of implementing or enforcing any provision of this chapter or any rule authorized under the provisions of this chapter, any duly authorized commission employee or provider may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to abuse, neglect, or exploitation.

(4) All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the **fourth amendment to the constitution of the United States** and **article I, section 17, of the constitution** of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.

(5) If consent to entry is not given, a commission employee or provider with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to issue, a search warrant upon showing that probable cause exists to believe a vulnerable adult is subject to abuse, neglect or exploitation. Upon request of a commission employee or provider, a peace officer shall serve the search warrant.

History.

I.C., § 39-5305, as added by 1991, ch. 329, § 6, p. 846; am. 1996, ch. 78, § 4, p. 246; am. 1998, ch. 308, § 6, p. 1012; am. 2019, ch. 43, § 5, p. 116.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 43, substituted “provider” for “contractor” throughout the section.

Compiler’s Notes.

Former § 39-5305, which was enacted as § 39-5205 by S.L. 1982 ch. 286, § 2, was amended and redesignated as § 39-5305 by § 47 of S.L. 1990, ch. 213 and was further amended and redesignated as § 39-5307 by § 9 of S.L. 1991, ch. 329.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 39-5306. Supportive services and disclosure. — (1) If there is substantiated abuse, neglect, or exploitation of a vulnerable adult, the commission or provider has the responsibility to assist the adult in obtaining available services.

(2) If the commission or provider develops a plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive to personal freedom and shall provide encouragement for client self-determination and continuity of care.

(3) If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.

(4) If the commission or provider determines that a vulnerable adult is an incapacitated person as defined in [section 15-5-101\(a\), Idaho Code](#), mentally ill as defined in [section 66-317, Idaho Code](#), or developmentally disabled as defined in [section 66-402, Idaho Code](#), the commission or provider may petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by chapter 5, title 15, Idaho Code, and chapters 3 and 4, title 66, Idaho Code.

(5) An employee or provider of the commission shall not be appointed the guardian or conservator of a vulnerable adult unless the commission employee or provider has a spousal or familial relationship with the vulnerable adult.

History.

[I.C., § 39-5204](#), as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 8, p. 846; am. 1996, ch. 78, § 5, p. 246; am. 1998, ch. 308, § 7, p. 1012; am. 2019, ch. 43, § 6, p. 116.

STATUTORY NOTES

Prior Laws.

Former § 39-5306, which was enacted as § 39-5206 by 1982, ch. 286, § 2, was repealed by S.L. 1991, ch. 329, § 7.

Amendments.

The 2019 amendment, by ch. 43, substituted “provider” for “contractor” throughout the section.

Compiler’s Notes.

This section was formerly compiled as § [39-5304] 39-5204.

§ 39-5307. Access to records. — Any person, department, agency or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, which shall be subject to disclosure according to chapter 1, title 74, Idaho Code, and shall only be divulged with the written consent of the vulnerable adult or his legal representative. No medical records of any vulnerable adult may be divulged for any purpose without the express written consent of such person or his legal representative, or pursuant to other proper judicial process.

History.

I.C., § 39-5205, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1990, ch. 213, § 47, p. 480; am. and redesign. 1991, ch. 329, § 9, p. 846; am. 2015, ch. 141, § 95, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the first sentence.

Compiler’s Notes.

This section was formerly compiled as § 39-5305.

Former § 39-5307, which was enacted as § 39-5207 by S.L. 1982, ch. 286, § 2, was amended and redesignated as § 39-5308 by § 10 of S.L. 1991, ch. 329.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 39-5308. Interagency cooperation. — (1) In performing the duties set forth in this chapter, the commission or provider may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions, and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.

(2) The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators against whom an allegation of adult abuse, neglect or exploitation has been substantiated. Upon request, all available supportive information shall be provided to enable the department to conduct criminal background checks and other required investigations.

(3) The department shall provide to the commission or provider any report received under this chapter from a nursing facility defined in [section 39-1301\(b\), Idaho Code](#), or an employee of such facility.

(4) The commission or provider shall provide the department with any report received under this chapter involving allegations of abuse, neglect or exploitation occurring in a nursing facility as defined in [section 39-1301\(b\), Idaho Code](#).

(5) The commission, providers, and the department shall use interagency staffing when necessary and share client and facility information necessary to provide services to vulnerable adults.

History.

[I.C., § 39-5207](#), as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 10, p. 846; am. 1996, ch. 78, § 6, p. 246; am. 1998, ch. 308, § 8, p. 1012; am. 2000, ch. 274, § 121, p. 199; am. 2019, ch. 43, § 7, p. 116.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 43, substituted “provider” or “providers” for “contractor” or “contractors” throughout the section.

Compiler’s Notes.

This section was formerly compiled as § [39-5307] 39-5207.

Section 39-5308, which was enacted as § 39-5208 by S.L. 1982, ch. 286, was amended and redesignated as § 39-5309 by § 12 of S.L. 1991, ch. 329.

§ 39-5309. Coordination of services. — Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the commission or provider shall initiate a review of each case at reasonable intervals over a reasonable period of time as the commission or provider deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from state agencies, departments, service providers and others, and shall comply with the consent provisions of this chapter.

History.

I.C., § 39-5208, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 12, p. 846; am. 1996, ch. 78, § 7, p. 246; am. 1998, ch. 308, § 9, p. 1012; am. 2019, ch. 43, § 8, p. 116.

STATUTORY NOTES

Prior Laws.

Former § 39-5309, which was enacted as § 39-5209 by 1982, ch. 286, § 2, was repealed by S.L. 1991, ch. 329, § 11.

Amendments.

The 2019 amendment, by ch. 43, substituted “provider” for “contractor” twice in the section.

Compiler’s Notes.

This section which was enacted as § 39-5208 by S.L. 1982, ch. 286, § 2 and compiled as § [39-5308] 39-5208 was amended and redesignated as § 39-5309 by § 12 of S.L. 1991, ch. 329.

§ 39-5310. Report to law enforcement — Prosecution. — (1) If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law. Notwithstanding the prohibition against disclosure of names of persons associated with the written report of an investigation as provided in [section 39-5304, Idaho Code](#), the commission shall disclose names associated with the written report when notification is made as required in this section.

(2) The abuse, neglect or exploitation of a vulnerable adult is a crime under [section 18-1505, Idaho Code](#), and is subject to punishments provided in that section and other applicable state law.

History.

[I.C., § 39-5310](#), as added by 1991, ch. 329, § 13, p. 846; am. 1996, ch. 78, § 8, p. 246; am. 1998, ch. 308, § 10, p. 1012; am. 2001, ch. 79, § 2, p. 199; am. 2005, ch. 166, § 3, p. 506.

STATUTORY NOTES

Prior Laws.

Former § 39-5310 which was enacted as § 39-5210 by S.L. 1982, ch. 286, § 2, p. 734 and was compiled as § [39-5310] 39-5210, was repealed by S.L. 1991, ch. 329, § 11.

§ 39-5311. Effect of actions taken pursuant to the natural death act.

— Any action taken by a physician or health facility pursuant to an agreement with a vulnerable adult in accordance with the provisions of chapter 45, title 39, Idaho Code, shall not be construed to constitute abuse, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient.

History.

I.C., § 39-5211, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 14, p. 846.

STATUTORY NOTES

Compiler's Notes.

This section, which was enacted as § 39-5211 by S.L. 1982, ch. 286, § 2, was amended and redesignated as § 39-5311 by § 14 of S.L. 1991, ch. 329.

§ 39-5312. Rules. — The director of the commission shall have the authority to adopt, promulgate and enforce such rules as he deems necessary in carrying out the provisions of this chapter, subject to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 39-5212, as added by 1982, ch. 286, § 2, p. 734; am. and redesign. 1991, ch. 329, § 15, p. 846; am. 1996, ch. 78, § 9, p. 246.

STATUTORY NOTES

Compiler's Notes.

This section, which was enacted as § 39-5212 by S.L. 1982, ch. 286, § 2, was amended and redesignated as § 39-5312 by § 15 of S.L. 1991, ch. 329.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 read: "SECTION 111. Sections 1, 2, 46 and 47 of this act shall be in full force and effect on and after July 1, 1990. All other sections of this act shall be in full force and effect on and after July 1, 1993."

Section 17 of S.L. 1991, ch. 329 declared an emergency and provided that Section 16 should be in full force and effect on and after its passage and approval. Approved April 5, 1991.

Chapter 54

ARTIFICIAL INSEMINATION

Sec.

39-5401. Definitions.

39-5402. Performed only by physician.

39-5403. Consent — Filing and notice requirements.

39-5404. Restrictions on semen donations.

39-5405. Rights of donor, child, husband.

39-5406. Application of act.

39-5407. Penalty.

39-5408. HTLV-III antibody.

§ 39-5401. Definitions. — As used in this act:

(1) “Artificial insemination” means introduction of semen of a donor as defined herein, into a woman’s vagina, cervical canal or uterus through the use of instruments or other artificial means.

(2) “Donor” refers to a man who is not the husband of the woman upon whom the artificial insemination is performed.

History.

1982, ch. 349, § 1, p. 862.

STATUTORY NOTES

Cross References.

Medical practice act, § 54-1801 et seq.

Parent and child, § 32-1001 et seq.

Compiler’s Notes.

The words “this act” refer to S.L. 1982, ch. 349, which is compiled as §§ 39-5401 to 39-5407.

§ 39-5402. Performed only by physician. — Only physicians licensed under chapter 18, title 54, Idaho Code, and persons under their supervision may select artificial insemination donors and perform artificial insemination.

History.

1982, ch. 349, § 2, p. 862.

§ 39-5403. Consent — Filing and notice requirements. — (1) Artificial insemination shall not be performed upon a woman without her prior written request and consent and the prior written request and consent of her husband.

(2) Whenever a child is born who may have been conceived by artificial insemination, a copy of the request and consent required under subsection (1) of this section shall be filed by the physician who performs the artificial insemination with the state registrar of vital statistics. The state board of health and welfare shall have the authority to promulgate rules and regulations and to prescribe methods and forms of reporting, and fees to carry out the provisions of this act. Storage, retrieval and confidentiality of records shall be governed by chapter 1, title 74, Idaho Code.

(3) The information filed under subsection (2) of this section shall be sealed by the state registrar and may be opened only upon an order of a court of competent jurisdiction, except that pursuant to chapter 1, title 74, Idaho Code, data contained in such records may be used for research and statistical purposes.

(4) If the physician who performs the artificial insemination does not deliver the child conceived as a result of the artificial insemination, it is the duty of the mother and her husband to give that physician notice of the child's birth. The physician who performs the artificial insemination shall not be liable for noncompliance with subsection (2) of this section if the noncompliance is a result of the failure of the mother and her husband to notify the physician of the birth.

History.

1982, ch. 349, § 3, p. 862; am. 1990, ch. 213, § 48, p. 480; am. 2015, ch. 141, § 96, p. 379.

STATUTORY NOTES

Cross References.

State board of health and welfare, § 56-1005.

State registrar of vital statistics, § 39-243.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” at the end of subsection (2) and in subsection (3).

Compiler’s Notes.

The words “this act” refer to S.L. 1982, ch. 349, which is compiled as §§ 39-5401 to 39-5407.

Effective Dates.

Section 8 of S.L. 1982, ch. 349 read: “The provisions of this act shall be effective on July 1, 1982, except subsections (2), (3) and (4) of section 3 [§ 39-5403] which shall take effect on July 1, 1983.”

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 39-5404. Restrictions on semen donations. — No semen shall be donated for use in artificial insemination by any person who:

(1) Has any disease or defect known by him to be transmissible by genes;
or

(2) Knows or has reason to know he has a venereal disease.

History.

1982, ch. 349, § 4, p. 862.

§ 39-5405. Rights of donor, child, husband. — (1) The donor shall have no right, obligation or interest with respect to a child born as a result of the artificial insemination.

(2) A child born as a result of the artificial insemination shall have no right, obligation or interest with respect to such donor.

(3) The relationship, rights and obligation between a child born as a result of artificial insemination and the mother's husband shall be the same for all legal intents and purposes as if the child had been naturally and legitimately conceived by the mother and the mother's husband, if the husband consented to the performance of artificial insemination.

History.

1982, ch. 349, § 5, p. 862.

CASE NOTES

Non-parent custody.

Standing.

Unmarried couple.

Non-parent Custody.

The Idaho supreme court's decision in *Stockwell v. Stockwell*, 116 Idaho 297, 775 P.2d 611 (1989) is not a key to the courthouse for non-parents seeking custody of minor children. Nor has the Idaho legislature, as of June 2017, adopted a statutory framework that would enable the unmarried partner of a biological mother to seek custody or visitation of an artificially conceived child. *Doe v. Doe*, 162 Idaho 254, 395 P.3d 1287 (2017).

Standing.

Mother's partner had no standing to claim, on behalf of the mother's child, that this section violates equal protection, because the partner had no legally recognized or protected relationship with the child. *Doe v. Doe*, 162 Idaho 254, 395 P.3d 1287 (2017).

Unmarried Couple.

Mother's partner could not, under this section, claim parentage of the mother's child by virtue of having consented to the mother's artificial insemination, as this section does not address the conception of a child through artificial insemination by an unmarried couple. *Doe v. Doe*, 162 Idaho 254, 395 P.3d 1287 (2017).

§ 39-5406. Application of act. — Except as may be otherwise provided by a judicial decree entered in any action filed before the effective date of this act, the provisions of this act apply to all persons conceived as a result of artificial insemination as defined herein.

History.

1982, ch. 349, § 6, p. 862.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1982, ch. 349, which is compiled as §§ 39-5401 to 39-5407.

The phrase “the effective date of this act” refers to the effective date of S.L. 1982, ch. 349, which was July 1, 1982.

Effective Dates.

Section 8 of S.L. 1982, ch. 349 read: “The provisions of this act shall be effective on July 1, 1982, except subsections (2), (3) and (4) of section 3 [§ 39-5403] which shall take effect on July 1, 1983.”

§ 39-5407. Penalty. — A person who violates the provisions of sections 2 [39-5402, Idaho Code], 3 [39-5403, Idaho Code], or 4 [39-5404, Idaho Code], of this act is guilty of a misdemeanor.

History.

1982, ch. 349, § 7, p. 862.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes.

The bracketed insertions were added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 8 of S.L. 1982, ch. 349 read: “The provisions of this act shall be effective on July 1, 1982, except subsections (2), (3) and (4) of section 3 [§ 39-5403] which shall take effect on July 1, 1983.”

§ 39-5408. HTLV-III antibody. — Every hospital, bank or other storage facility where a person has donated semen shall use all reasonable means to detect if the donor has an antibody to HTLV-III in his blood. In the event that an antibody to HTLV-III is detected, such semen shall not be used for any purposes of artificial insemination.

As used in this section, “HTLV-III” means the human T-cell lymphotropic virus type III that causes acquired immunodeficiency syndrome.

History.

I.C., § 39-5408, as added by 1986, ch. 111, § 1, p. 304.

Idaho Code Ch. 55

• [Title 39](#)», « [Ch. 55](#) »

Chapter 55 CLEAN INDOOR AIR

Sec.

39-5501. Legislative findings and intent.

39-5502. Definitions.

39-5503. Prohibitions — Exceptions.

39-5504. Designated smoking areas. [Repealed.]

39-5505. Smoking in elevators prohibited.

39-5506. Responsibilities of employers.

39-5507. Violations.

39-5508. Rules and regulations.

39-5509. Other statutes not affected.

39-5510. Smoking on buses.

39-5511. Local provisions.

§ 39-5501. Legislative findings and intent. — (1) Public health officials have concluded that secondhand tobacco smoke causes disease, including lung cancer and heart disease, in nonsmoking adults, as well as causes serious conditions in children such as asthma, respiratory infections, middle ear infections, and sudden infant death syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma and allergies and cause eye, throat and nasal irritation. The conclusions of public health officials concerning secondhand tobacco smoke are sufficient to warrant measures that regulate smoking in public places in order to protect the public health and the health of employees who work at public places.

(2) The intent of this chapter is to protect the public health, comfort and environment, the health of employees who work at public places and the rights of nonsmokers to breathe clean air by prohibiting smoking in public places and at public meetings.

History.

I.C., § 39-5501, as added by 1985, ch. 60, § 1, p. 119; am. 2004, ch. 389, § 1, p. 1166.

§ 39-5502. Definitions. — As used in this chapter:

(1) “Auditorium” means a public building where an audience sits and any corridors, hallways or lobbies adjacent thereto.

(2) “Bar” means any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where: (a) the service of food is incidental to the consumption of such beverages, or (b) no person under the age of twenty-one (21) years is permitted except as provided in [section 23-943, Idaho Code](#), as it pertains to employees, musicians and singers, and all public entrances are clearly posted with signs warning patrons that it is a smoking facility and that persons under twenty-one (21) years of age are not permitted. “Bar” does not include any area within a restaurant.

(3) “Employer” means any person, partnership, limited liability company, association, corporation or nonprofit entity that employs one (1) or more persons, including the legislative, executive and judicial branches of state government; any county, city, or any other political subdivision of the state; or any other separate unit of state or local government.

(4) “Indoor shopping mall” means an indoor facility located at least fifty (50) feet from any public street or highway and housing no less than ten (10) retail establishments.

(5) “Public meeting” means all meetings open to the public.

(6) “Public place” means any enclosed indoor place of business, commerce, banking, financial service or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the public place have general and regular access or which the public uses including:

- (a) Buildings, offices, shops or restrooms;
- (b) Waiting rooms for means of transportation or common carriers;
- (c) Restaurants;
- (d) Theaters, auditoriums, museums or art galleries;

(e) Hospitals, libraries, indoor shopping malls, indoor sports arenas, concert halls, or airport passenger terminals, and within twenty (20) feet of public entrances and exits to such facilities;

(f) Public or private elementary or secondary school buildings and educational facilities and within twenty (20) feet of entrances and exits of such buildings or facilities;

(g) Retail stores, grocery stores or arcades;

(h) Barbershops, hair salons or laundromats;

(i) Sports or fitness facilities;

(j) Common areas of nursing homes, resorts, hotels, motels, bed and breakfast lodging facilities and other similar lodging facilities, including lobbies, hallways, restaurants and other designated dining areas and restrooms of any of these;

(k) Any child care facility subject to licensure under the laws of Idaho, including those operated in private homes, when any child cared for under that license is present;

(l) Public means of mass transportation including vans, trains, taxicabs and limousines when passengers are present; and

(m) Any public place not exempted by [section 39-5503, Idaho Code](#).

(7) “Publicly-owned building or office” means any enclosed indoor place or portion of a place owned, leased or rented by any state, county or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, municipal or county taxes.

(8) “Restaurant” means an eating establishment including, but not limited to, coffee shops, cafes, cafeterias, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within a restaurant.

(9) “Smoking” includes the possession of any lighted tobacco product in any form.

(10) “Smoking area” means a designated area in which smoking is permitted.

History.

I.C., § 39-5502, as added by 1985, ch. 60, § 1, p. 119; am. 2004, ch. 389, § 2, p. 1166.

§ 39-5503. Prohibitions — Exceptions. — (1) No person shall smoke in a public place, publicly-owned building or office, or at a public meeting, except in the following which may contain smoking areas or be designated as smoking areas in their entirety:

- (a) Bars;
- (b) Retail businesses primarily engaged in the sale of tobacco or tobacco products;
- (c) Buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function;
- (d) Guest rooms in hotels, motels, bed and breakfast lodging facilities, and other similar lodging facilities, designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted;
- (e) Theatrical production sites, if smoking is an integral part of the story in the theatrical production;
- (f) Areas of owner-operated businesses, with no employees other than the owner-operators, that are not commonly open to the public;
- (g) Any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than fifty percent (50%) of the total area within the private home;
- (h) Idaho state veterans homes, established pursuant to [section 66-901, Idaho Code](#), that permit smoking in designated areas, provided that physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas; and
- (i) A designated employee breakroom established by a small business owner employing five (5) or fewer employees, provided that all of the following conditions are met:

- (i) The breakroom is not accessible to minors;
- (ii) The breakroom is separated from other parts of the building by a floor to ceiling partition;
- (iii) The breakroom is not the sole means of entrance or exit to the establishment or its restrooms and is located in an area where no employee is required to enter as part of the employee's work responsibilities. For purposes of this paragraph, the term "work responsibilities" does not include custodial or maintenance work performed in a breakroom when it is unoccupied; and
- (iv) "Warning: Smoking Permitted" signs are prominently posted in the smoking breakroom and properly maintained by the employer. The letters on such signs shall be at least one (1) inch in height.

(2) This section shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(3) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment.

History.

I.C., § 39-5503, as added by 1985, ch. 60, § 1, p. 119; am. 2004, ch. 389, § 3, p. 1166; am. 2005, ch. 96, § 1, p. 315; am. 2007, ch. 272, § 1, p. 799.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 272, deleted former paragraph (1)(c), which read: "Bowling alleys," and made related redesignations.

Effective Dates.

Section 2 of S.L. 2005, ch. 96 declared an emergency. Approved March 21, 2005.

§ 39-5504. Designated smoking areas. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-5504**, as added by 1985, ch. 60, § 1, p. 119, was repealed by S.L. 2004, ch. 389, § 4.

§ 39-5505. Smoking in elevators prohibited. — Notwithstanding any other provision of this chapter or any other statute, or county or city ordinance, no person shall smoke in any elevator generally accessible to the public. Signs indicating that smoking is prohibited shall be conspicuously posted in each elevator and at each entrance to an elevator car or bank of elevators.

History.

I.C., § 39-5505, as added by 1985, ch. 60, § 1, p. 119.

§ 39-5506. Responsibilities of employers. — (1) No employer or other person in charge of a public place or publicly-owned building or office shall knowingly or intentionally permit the smoking of tobacco products in violation of this chapter.

(2) Any employer or other person in charge of a public place or publicly-owned building or office who knowingly violates the provisions of this section is guilty of an infraction and is subject to a fine not to exceed one hundred dollars (\$100).

(3) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the department of health and welfare or the department of labor pursuant to this section shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation.

History.

I.C., § 39-5506, as added by 1985, ch. 60, § 1, p. 119; am. 2004, ch. 389, § 5, p. 1166.

§ 39-5507. Violations. — An employer, or other person in charge of a public place or publicly owned building, or the agent or employee of such person, who observes a person smoking in apparent violation of this chapter shall ask the person to extinguish all lighted tobacco products. If the person persists in violating this chapter, the employer, person in charge, agent or employee shall ask the person to leave the premises. Any person who refuses to either extinguish all lighted tobacco products or leave the premises is guilty of an infraction and is subject to a fine of seventeen dollars and fifty cents (\$17.50). Any violation may be reported to a law enforcement officer.

History.

I.C., § 39-5507, as added by 1985, ch. 60, § 1, p. 119; am. 2004, ch. 389, § 6, p. 1166; am. 2015, ch. 198, § 3, p. 608.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 198, substituted “fine of seventeen dollars and fifty cents (\$17.50)” for “fine not to exceed fifty dollars (\$50.00)” at the end of the third sentence.

§ 39-5508. Rules and regulations. — The director of the Idaho department of health and welfare shall adopt rules and regulations necessary, reasonable and consistent with the intent of this chapter to implement the provisions of this chapter. The director may, upon request, waive the provisions of said rules and regulations if it is determined that there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers.

History.

I.C., § 39-5508, as added by 1985, ch. 60, § 1, p. 119.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, § 56-1002.

§ 39-5509. Other statutes not affected. — The provisions of this chapter shall not be deemed to amend, modify or repeal sections 18-5904, 18-5905 and 18-5906, Idaho Code, relating to no smoking during public meetings.

History.

I.C., § 39-5509, as added by 1985, ch. 60, § 1, p. 119.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1985, ch. 60 provided that the act should take effect on and after January 1, 1986.

§ 39-5510. Smoking on buses. — (1) Smoking of tobacco or other products in or upon any bus, except a charter bus, is a violation of the provisions of this chapter, and any person smoking tobacco or other products on a bus, except a charter bus shall be guilty of an infraction and shall be punished as provided in [section 39-5507, Idaho Code](#).

(2) As used in this section:

(a) “Bus” means any passenger bus or coach or other motor vehicle having a seating capacity of fifteen (15) or more passengers operated by a bus company for the purpose of carrying passengers or cargo for hire.

(b) “Bus company” means any person, group of persons, association, partnership, corporation or other recognized legal entity providing for-hire transportation to passengers or cargo by bus upon the highways in the state, including passengers and cargo in interstate or intrastate travel. These terms also include cities, counties, districts, public corporations, boards and commissions established under the laws of this state providing transportation to passengers or cargo by bus upon the highways in the state, whether or not for hire.

(c) “Charter” means a group of persons, pursuant to a common purpose and under a single contract, and at a fixed charge in accordance with a bus company’s tariff, which has acquired the exclusive use of a bus to travel together to a specified destination or destinations, or special excursions to one (1) specific destination.

History.

[I.C., § 39-5510](#), as added by 1987, ch. 183, § 1, p. 362.

§ 39-5511. Local provisions. — Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting ordinances or regulations more restrictive than the provisions contained herein.

History.

I.C., § 39-5511, as added by 2004, ch. 389, § 7, p. 1166.

Chapter 56

PERSONAL ASSISTANCE SERVICES

Sec.

39-5601. Legislative intent.

39-5602. Definitions.

39-5603. Standards for provision of personal assistance services.

39-5604. Health and background checks.

39-5605. Training of personal assistants.

39-5606. Payment to be made to provider. [Repealed.]

39-5607. Effect of personal assistance agency rates. [Repealed.]

39-5608. Liability of actions under this chapter.

39-5609. Personal assistance oversight committee.

§ 39-5601. Legislative intent. — The purpose and intent of this chapter is to authorize personal assistance services for medicaid eligible participants in the participant's home and community. It is further the purpose of this chapter to help maintain these eligible participants in their own homes in order to provide for the greatest degree of independence and self-reliance possible.

Personal assistance services are an integral component of the long-term care service delivery system and they are to be designed to provide a range of services for persons who are elderly, for persons with disabilities and for children who meet medical necessity criteria for personal care services (PCS). These services are to help individuals compensate for functional limitations and are to be delivered over a sustained period of time to persons who lost or never acquired some degree of functional capacity. Services will be viewed as enhancing the quality of life, individual choice, consumer control, independence and community integration.

Personal assistance services related to functional need shall be provided in order to maintain the independence, privacy, and dignity of the individual in the least restrictive, most cost-effective setting.

The participant and, at the option of the participant, the family of the participant, if available, shall be involved in the development of the individual service plan based on the participant's needs identified through an assessment conducted by the department.

History.

I.C., § 39-A4701, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 1, p. 888; am. 2000, ch. 274, § 122, p. 799; am. 2010, ch. 347, § 1, p. 905.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 347, added “and for children who meet medical necessity criteria for personal care services (PCS)” in the first

sentence in the second paragraph.

Compiler's Notes.

This section was formerly compiled as § 39-A4701.

The letters "PCS" enclosed in parentheses so appeared in the law as enacted.

§ 39-5602. Definitions. — As used in this chapter, the following terms shall have the following meanings:

(1) “Department” means the department of health and welfare of the state of Idaho.

(2) “Director” means the director of the department of health and welfare.

(3) “Eligible participant” or “participant” means an individual determined eligible by the department for Idaho medicaid services, as authorized by title XIX, of the social security act, as amended.

(4) “Fiscal intermediary agency” means an entity that provides services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training and dismissing his personal assistant and over the manner in which services are delivered.

(5) “Individual service plan” means a document which outlines all services including, but not limited to, personal assistance services and IADLs, required to maintain the individual in his or her home and community.

(6) “Instrumental activities of daily living (IADL)” means those activities performed in supporting the activities of daily living for an adult, including, but not limited to: managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community.

(7) “PCS family alternate care provider” means an individual licensed by the department to provide personal care services to one (1) or two (2) children who are unable to reside in their own home and require assistance with medically oriented tasks related to the child’s physical or functional needs.

(8) “Personal assistance agency” means an entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, is the employer of record and in fact.

(9) “Personal assistance services” includes both attendant care services and personal care services and means services that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant’s needs for long-term maintenance, supportive care or IADLs. These services may include, but are not limited to, personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services shall be based on the participant’s abilities and limitations, medical diagnosis or other category of disability.

(10) “Personal assistant” means an individual who directly provides personal assistance services.

(11) “Personal care services (PCS)” means a range of medically oriented care services related to a participant’s physical or functional requirements. These services are provided in the participant’s home or personal residence but do not include housekeeping or skilled nursing care.

(12) “Provider” means a personal assistance agency, a fiscal intermediary agency or a PCS family alternate care provider.

(13) “Representative” means an employee of the department of health and welfare.

(14) “Service coordination” means a case management activity that assists individuals eligible for medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of the individual. Service coordination is a brokerage model of case management.

(15) “Voucher service option” means a method of service provision whereby the participant receives vouchers to pay for personal assistance services.

History.

I.C., § 39-A4702, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 2, p. 888; am. 1997, ch. 316, § 1, p. 933; am. 1998, ch. 224, § 1, p. 770; am. 2000, ch. 274, § 123, p. 799; am. 2007, ch. 222, § 2, p. 665; am. 2010, ch. 347, § 2, p. 905.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2007 amendment, by ch. 222, deleted former subsections (1) and (12), which were the definitions for “Attendant care” and “Personal care services,” respectively, and redesignated the remaining subsections accordingly; in subsection (5), substituted “agency” for “services,” inserted “an entity that provides,” and deleted “regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered” from the end; in subsection (8), deleted “and may provide fiscal intermediary services” from the end; in subsection (9), in the first sentence, substituted “includes both attendant care services” for “includes attendant care,” and added the language beginning “and means services that involve personal and medically oriented tasks,” and added the last sentence; and in subsection (11), inserted “or a fiscal intermediary agency.”

The 2010 amendment, by ch. 347, deleted subsection (1), which was the definition for “case management,” added subsections (7), (11), and (14) and redesignated the remaining subsections accordingly; in subsection (4), added “and over the manner in which services are delivered”; in subsection (6), inserted “for an adult”; in the last sentence in subsection (9), deleted “regardless of age” following “limitations”; and in subsection (12), added “or a PCS family alternate care provider.”

Federal References.

Title XIX of the Social Security Act, referred to in subdivision (3), is compiled as [42 USCS § 1396 et seq.](#)

Compiler’s Notes.

This section was formerly compiled as § 39-A4702.

The letters “IADL” and “PCS” enclosed in parentheses so appeared in the law as enacted.

§ 39-5603. Standards for provision of personal assistance services. —

The director shall have the power and it shall be his duty to promulgate and adopt appropriate rules necessary to implement and enforce standards for provision of personal assistance services.

The following standards for provision of personal assistance services and other provisions contained throughout this chapter and rules shall apply to participants and providers receiving or providing personal assistance services either as a medicaid option service or a waived service, unless prohibited by federal law or contents of the federal waiver agreement.

(1) Personal care services shall be included in the medicaid services described in section 56-255(3) and (4), Idaho Code.

(2) Attendant care shall be included as a service under medicaid home and community-based waiver(s).

(3) All attendant care services must be authorized by the department or its designee.

(4) The department will establish by rule maximum hours per month of personal care services available to the individual participant under the state medicaid plan.

(5) The department shall enter into agreements with providers for the provision of personal assistance services. A single provider may operate as both a personal assistance agency and a fiscal intermediary agency. However, the agency must clearly document whether it is operating as a personal assistance agency or as a fiscal intermediary for each participant. The department may deny provider status or revoke that status when a provider is found to endanger the health, person or property of the participant, or is in violation of rules promulgated by the department or the provider agreement.

(6) A personal assistance agency shall have the responsibility for the following:

(a) Recruitment, hiring, firing, training, supervision, scheduling, payroll, and the assurance of quality of service, of its personal assistants;

- (b) Complying with state and federal labor and tax laws, rules and regulations;
- (c) Maintaining liability insurance coverage;
- (d) Provision of an appropriately qualified nurse when required;
- (e) Assignment of a qualified personal assistant to each authorized participant after consultation with and prior approval of that participant;
- (f) Assuring all personal assistants providing services meet the standards and qualifications of this chapter;
- (g) Billing medicaid for services approved and authorized;
- (h) Collecting any participant contribution due;
- (i) Referring participants to the department for service coordination services based on established criteria;
- (j) Providing for care by a qualified replacement when the regular personal assistant is unable to provide the services, and providing for unanticipated services approved on the individual service plan when requested by the participant; and
- (k) Conducting, at least annually, participant satisfaction/quality control reviews available to the department and general public.

(7) A fiscal intermediary agency shall have the responsibility for the following:

- (a) To assure compliance with legal requirements related to the employment of participant/family directed personal assistants;
- (b) To offer services to enable participants or families to perform required employer tasks themselves;
- (c) To bill the medicaid program for services approved and authorized by the department;
- (d) To collect any participant contribution due;
- (e) To pay personal assistants for services;
- (f) To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations;

(g) To assure that all personal assistants providing services meet the standards and qualifications of this chapter;

(h) To refer participants to service coordination services based on established criteria;

(i) To maintain liability insurance coverage;

(j) To conduct, at least annually, participant satisfaction and quality control reviews which shall be available to the department and to the general public; and

(k) To maintain documentation that the participant or his legal representative agrees in writing that he takes responsibility for and accepts potential risks, and any resulting consequences, for his choice to manage his own personal assistance services.

(8) Personal assistants are not employees of the state.

(9) Service coordination shall be made available to personal assistance participants where and when appropriate. In order to avoid a conflict of interest, service coordination shall not be provided by the same agency that provides personal assistance services to the participant.

(10) The department's regional medicaid staff shall review and approve the individual service plan, authorize personal assistance services, the hours of service, and make appropriate referrals for service coordination for eligible individuals.

(11) The department shall establish and maintain a community awareness program that will educate Idaho citizens regarding the purpose and function of all long-term care alternatives including, but not limited to, personal assistance services and individual participant rights. This program will be developed in cooperation with other state agencies including, but not limited to, the commission on aging and the state independent living council.

(12) It shall be the responsibility of the participant or his designee or legal representative, when appropriate, to select the provider of personal assistance services.

(13) The department shall provide the participant, his designee or legal representative, with a list of available providers of personal assistance

services; however, this does not relieve the participant or his designee or legal representative of the responsibility of provider selection.

(14) In those cases where the participant or his designee or legal representative cannot arrange for personal assistance services or asks for help in making arrangements, a representative of the department may arrange for or help arrange for personal assistance services on behalf of the participant.

History.

I.C., § 39-A4703, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 3, p. 888; am. 1997, ch. 316, § 2, p. 933; am. 1998, ch. 224, § 2, p. 770; am. 2000, ch. 274, § 124, p. 799; am. 2006, ch. 283, § 1, p. 869; am. 2007, ch. 222, § 3, p. 665; am. 2010, ch. 347, § 3, p. 905.

STATUTORY NOTES

Cross References.

Commission on aging, § 67-5001 et seq.

State independent living council, § 56-1201 et seq.

Amendments.

The 2006 amendment, by ch. 283, deleted former subsection (2), which read: “Personal care services shall be ordered by a physician or authorized provider,” and redesignated the remaining subsections accordingly.

The 2007 amendment, by ch. 222, rewrote subsection (1), which formerly read: “Personal care services shall be included as a state plan service under medicaid”: added the second sentence in subsection (5); in the introductory language in subsection (6), substituted “personal assistance agency” for “provider agency”; added paragraph (6)(h) and made related redesignations; in paragraph (6)(i), inserted “the department for”; in the introductory language in subsection (7), deleted “personal assistance agency that provides” preceding “fiscal,” and substituted “agency” for “services”; in paragraph (7)(b), deleted “supportive” preceding “services”; rewrote paragraph (7)(g), which formerly read: “To offer a full range of services and perform all services contained in a written agreement between the participant and the provider”; and added paragraphs (7)(h) through (7)(k).

The 2010 amendment, by ch. 347, throughout subsections (6) through (10), substituted “service coordination” for “case management.”

Compiler’s Notes.

This section was formerly compiled as § 39-A4703.

§ 39-5604. Health and background checks. — The director shall require providers to obtain health tests or screens, criminal background and nurse's aide registry checks, and licenses and/or certifications necessary to protect the health, person and property of the participant for any personal assistant acting as an employee, agent, or contractor of a provider. He may deny provider status or revoke that status when a provider or an employee, agent, or contractor of a provider, is found to endanger the health, person or property of the participant.

History.

I.C., § 39-A4704, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 4, p. 888; am. 2000, ch. 274, § 125, p. 799.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-A4704.

§ 39-5605. Training of personal assistants. — The director may require a personal assistant to successfully complete a training program established by the rules before beginning to provide personal assistance services. Those providing personal assistance services when the rule is established will be given a reasonable period of time to obtain the required training. The director may establish different training requirements for different services provided and for personal assistants serving participants with intensive needs. The department shall conduct training to include, but not be limited to, administrative rules, billing procedures and service requirements.

History.

I.C., § 39-A4705, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 5, p. 888; am. 1997, ch. 316, § 3, p. 933; am. 2000, ch. 274, § 126, p. 799.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-A4705.

§ 39-5606. Payment to be made to provider. [Repealed.]

Repealed by S.L. 2011, ch. 164, § 1, effective July 1, 2011.

History.

I.C., § 39-A4706, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 6, p. 888; am. 1997, ch. 316, § 4, p. 933; am. 1998, ch. 224, § 3, p. 770; am. 2000, ch. 274, § 127, p. 799; am. 2010, ch. 296, § 1, p. 801; am. 2010, ch. 347, § 4, p. 905; am. 2011, ch. 148, § 1, p. 412; am. 2011, ch. 151, § 20, p. 414.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-A4706.

S.L. 2011, ch. 148, § 1 and S.L. 2011, ch. 151, § 20 both purported to amend this section; however, S.L. 2011, ch. 164, § 1 repealed this section, effective July 1, 2011.

§ 39-5607. Effect of personal assistance agency rates. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 39-5607, which comprised **I.C., § 39-5607**, as added by 1997, ch. 316, § 5, p. 933, was repealed by S.L. 1998, ch. 224, § 4, effective July 1, 1998.

Compiler's Notes.

This section, which comprised **I.C., § 39-5607**, as added by 2000, ch. 274, § 128, p. 799, was repealed by S.L. 2007, ch. 222, § 4.

§ 39-5608. Liability of actions under this chapter. — (1) The participant, his designee or legal representative, if such is responsible, shall be liable for any acts of the participant performed or committed while receiving care or services under the provisions of this chapter.

(2) The department shall not be held liable for any actions under this chapter, except pursuant to section 39-5603(13) [39-5603(12)], Idaho Code, when the representative of the department is acting on behalf of the participant, his designee or legal representative; however, the provisions of section 39-5603(11) [39-5603(10)], Idaho Code, shall remain in force.

(3) Nothing in this chapter shall exempt the provider of services from any liability caused by such provider's negligence, abuse, or other improper action of the provider.

History.

I.C., § 39-A4707, as added by 1981, ch. 65, § 1, p. 93; am. and redesign. 1990, ch. 326, § 7, p. 888; am. and redesign. 1997, ch. 316, § 6, p. 933; am. 2000, ch. 274, § 129, p. 799; am. 2006, ch. 283, § 2, p. 869.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 283, updated the section references in subsection (2).

Legislative Intent.

Section 7 of S.L. 1997, ch. 316 read: "It is the intent of the Legislature that the Department of Health and Welfare shall convene a committee consisting of providers of personal care services and recipients of such services and organizations representing such recipients, and other interested parties, for the purpose of planning the implementation of changes to the Medicaid waiver and Personal Care Services Program required by this act. At least one-half of the membership of the committee shall be recipients and their representatives."

Compiler's Notes.

This section was formerly compiled as § 39-5607 and as § 39-A4707.

The bracketed insertions were added in this section by the compiler to supply the probable intended statutory references.

Effective Dates.

Section 8 of S.L. 1997, ch. 316 declared an emergency and provided that the act should be in full force and effect on and after April 1, 1997. Approved March 24, 1997.

§ 39-5609. Personal assistance oversight committee. — The department shall establish, as part of the medical care advisory committee (MCAC), an oversight subcommittee consisting of providers of personal assistance services and participants of such services and advocacy organizations representing such participants, and other interested parties, for the purpose of planning, monitoring, and recommending changes to the medicaid waiver and personal assistance programs to the MCAC. At least fifty-one percent (51%) of the committee membership shall be participants or their representatives.

History.

I.C., § 39-5609, as added by 2000, ch. 274, § 130, p. 799; am. 2007, ch. 222, § 5, p. 665.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 222, deleted the former last sentence, which read: “The director shall determine when and if this role shall be performed by the MCAC.”

Compiler’s Notes.

The medical care advisory committee advises Idaho medicaid in the development and refinement of the medicaid program. See: <http://www.healthandwelfare.idaho.gov> *medical medicaid medicalcareadvisory committeetabid/1206/default.aspx*.

The letters “MCAC” enclosed in parentheses so appeared in the law as enacted.

Chapter 57
PREVENTION OF MINORS' ACCESS TO TOBACCO
PRODUCTS OR ELECTRONIC SMOKING DEVICES

Sec.

39-5701. Legislative findings and intent.

39-5702. Definitions.

39-5703. Possession, distribution, or use by a minor.

39-5704. Permitting of tobacco products or electronic smoking devices retailers.

39-5705. Sale or distribution of tobacco products or electronic smoking devices to a minor.

39-5706. Vendor-assisted sales.

39-5707. Opened packages and samples.

39-5708. Civil penalties for violations of permit.

39-5709. Criminal penalties for violations without a permit.

39-5710. Conduct of enforcement actions.

39-5711. Funding and creation of prevention of minors' access to tobacco products or electronic smoking devices fund.

39-5712. Severability.

39-5713. Local ordinances.

39-5714. Requirements for delivery sales.

39-5715. Age verification requirements.

39-5716. Disclosure and notice requirements.

39-5717. Shipping requirements — Tobacco products or electronic smoking devices.

39-5717A. Shipping requirements — Electronic cigarettes. [Repealed.]

39-5718. Registration and reporting requirements.

§ 39-5701. Legislative findings and intent. — The prevention of youth access to tobacco products and electronic smoking devices within the state of Idaho is hereby declared to be a state goal to promote the general health and welfare of Idaho's young people.

Tobacco use is the leading cause of preventable death in Idaho, and nicotine is a highly addictive, potentially harmful substance. Both present an urgent public health challenge. New and emerging tobacco products and electronic nicotine delivery devices like electronic cigarettes are linked to an increase in youth use of tobacco and nicotine products, are connected to the use of traditional tobacco products like cigarettes, and are associated with increased addiction in youth users. Therefore, it is this state's policy to prevent the illegal sale, theft, and easy access of tobacco products and electronic smoking devices to minors, to prohibit the possession, distribution, and use of tobacco products and electronic smoking devices by minors, and to otherwise discourage and prevent the possession, use, and trafficking in tobacco products and electronic smoking devices by minors.

History.

I.C., § 39-5701, as added by 1998, ch. 418, § 2, p. 1316; am. 2020, ch. 318, § 1, p. 905.

STATUTORY NOTES

Prior Laws.

Former §§ 39-5701 to 39-5708 which comprised: **I.C., §§ 39-5701 to 39-5708**, as added by 1997, ch. 278, § 1, p. 824 was repealed by S.L. 1998, ch. 418, § 1, effective January 1, 1999.

Amendments.

The 2020 amendment, by ch. 318, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

S.L. 1998, ch. 418, which repealed the prior version of this chapter, effective January 1, 1999, provides in § 3: “The Department of Health and Welfare is hereby authorized to begin rule promulgation and undertake other necessary tasks to administer the provisions of this act prior to January 1, 1999.”

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

§ 39-5702. Definitions. — The terms used in this chapter are defined as follows:

(1) “Business” means any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities.

(2) “Delivery sale” means to distribute tobacco products or electronic smoking devices to a consumer in a state where either:

(a) The individual submits the order for such sale by means of a telephonic or other method of voice transmission, data transfer via computer networks, including the internet and other online services, or facsimile, or the mails; or

(b) The tobacco products or electronic smoking devices are delivered by use of the mails or a delivery service.

(3) “Delivery service” means any person who is engaged in the commercial delivery of letters, packages or other containers.

(4) “Department” means the state department of health and welfare or its duly authorized representative.

(5) “Distribute” means to give, deliver, sell, offer to give, offer to deliver, offer to sell or cause any person to do the same or hire any person to do the same.

(6) “Minor” means a person under eighteen (18) years of age.

(7) “Minor exempt permit” means a permittee location whose revenues from the sale of alcoholic beverages for on-site consumption comprises at least fifty-five percent (55%) of total revenues, or whose products and services are primarily obscene, pornographic, profane, or sexually oriented, is exempt from inspections assisted by a minor, if minors are not allowed in the location and such prohibition is posted clearly on all entrance doors.

(8) “Permit” means a permit issued by the department for the sale or distribution of tobacco products or electronic smoking devices.

(9) “Permittee” means the holder of a valid permit for the sale or distribution of tobacco products or electronic smoking devices.

(10) “Photographic identification” means state, district, territorial, possession, provincial, national or other equivalent government driver’s license, identification card or military card, in all cases bearing a photograph and a date of birth, or a valid passport.

(11) “Random unannounced inspection” means an inspection of retail outlets by a law enforcement agency or by the department, with or without the assistance of a minor, to monitor compliance of this chapter.

(12) “Seller” means the person who physically sells or distributes tobacco products or electronic smoking devices.

(13)(a) “Tobacco product or electronic smoking device” means:

(i) Any substance containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to cigarettes, cigars, pipes, snuff, smoking or chewing tobacco, snus, tobacco papers, or smokeless tobacco;

(ii) Any electronic smoking device that may be used to deliver an aerosolized or a vaporized substance to the person inhaling from the device, including but not limited to an electronic cigarette, an electronic cigar, an electronic pipe, a vape pen, or an electronic hookah, or any component, part, or accessory of such a device, or any substance intended to be aerosolized or vaporized during use of the device, whether or not the substance contains nicotine, or any heated or lighted device intended to be used for inhalation; or

(iii) Any components, parts, or accessories of a tobacco product or an electronic smoking device, whether or not they contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic hookah, or vape pen, or under any other product name or descriptor.

(b) The term “tobacco product or electronic smoking device” does not include drugs, devices, or combinations of products authorized for sale

by the United States food and drug administration as those terms are defined in the federal food, drug, and cosmetic act.

(14) “Vending machine” means any mechanical, electronic, or other similar device which, upon the insertion of tokens, money or any other form of payment, dispenses tobacco products or electronic smoking devices.

(15) “Vendor-assisted sales” means any sale or distribution in which the customer has no access to the product except through the assistance of the seller.

(16) “Without a permit” means a business that has failed to obtain a permit or a business whose permit is suspended or revoked.

History.

I.C., § 39-5702, as added by 1998, ch. 418, § 2, p. 1316; am. 2003, ch. 159, § 1, p. 449; am. 2003, ch. 273, § 1, p. 728; am. 2004, ch. 318, § 5, p. 892; am. 2012, ch. 39, § 1, p. 118; am. 2020, ch. 318, § 2, p. 905.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Prior Laws.

Former § 39-5702 was repealed. See Prior Laws, § 39-5701.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 159, inserted present subsection (7).

The 2003 amendment, by ch. 273, inserted subsections (2) and (3), and renumbered the subsequent subsections accordingly.

The 2012 amendment, by ch. 39, added subsection (6) and redesignated the subsequent subsections accordingly and inserted “or electronic cigarettes” twice in subsection (2) and at the ends of subsections (13) and (15).

The 2020 amendment, by ch. 318, substituted “electronic smoking devices” for “electronic cigarettes” throughout; deleted former subsection (6), which read: “Electronic cigarette’ means any device that can provide an inhaled dose of nicotine by delivering a vaporized solution. ‘Electronic cigarette’ includes the components of an electronic cigarette including, but not limited to, liquid nicotine” redesignated former subsections (7) to (17) as present subsections (6) to (16); added “or electronic smoking devices” at the ends of subsections (8) and (9); and rewrote former subsection (14) now (13), which read: “Tobacco product’ means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers or smokeless tobacco.

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

CASE NOTES

Cited [State v. Maybee, 148 Idaho 520, 224 P.3d 1109 \(2010\).](#)

§ 39-5703. Possession, distribution, or use by a minor. — (1) It shall be unlawful for a minor to possess, receive, purchase, use, or consume tobacco products or electronic smoking devices or to attempt any of the foregoing.

(2) It shall be unlawful for a minor to sell or distribute tobacco products or electronic smoking devices or to attempt either of the foregoing.

(3) It shall be unlawful for a minor to provide false identification or make any false statement regarding their age in an attempt to obtain tobacco products or electronic smoking devices.

(4) A minor who is assisting with a random unannounced inspection in accordance with this chapter shall not be in violation of this chapter.

(5) A minor may possess but not sell or distribute tobacco products or electronic smoking devices in the course of employment, for duties such as stocking shelves or carrying purchases to customers' vehicles.

(6) Penalties for violations by a minor. A violation of subsection (1) of this section by a minor shall constitute an infraction and shall be punishable by a fine of seventeen dollars and fifty cents (\$17.50). The first violation of subsection (2) or (3) of this section by a minor shall constitute an infraction and shall be punishable by a fine of two hundred dollars (\$200). A subsequent violation of subsection (2) or (3) of this section by a minor shall constitute a misdemeanor and shall be punishable by imprisonment in an appropriate facility not exceeding thirty (30) days, a fine not exceeding three hundred dollars (\$300), or both such fine and imprisonment. The court may, in addition to the penalties provided in this section, require the minor and the minor's parents or legal guardian to attend tobacco product or electronic smoking device awareness programs or to perform community service in programs related to tobacco product or electronic smoking device awareness.

History.

I.C., § 39-5703, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 2, p. 118; am. 2015, ch. 158, § 1, p. 553; am. 2020, ch. 318, § 3, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5703 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2012 amendment, by ch. 39, inserted “or electronic cigarettes” in subsections (1), (2) and (4).

The 2015 amendment, by ch. 158, deleted “sell, distribute” following “receive, purchase” in subsection (1); added subsection (2) and redesignated the remaining subsections accordingly; and, in subsection (6), added the second and third sentences, and substituted “A subsequent violation of subsection (2) or (3) of this section” for “A violation of this chapter” and “thirty (30) days” for “six (6) months” in the fourth sentence.

The 2020 amendment, by ch. 318, substituted “electronic smoking devices” for “electric cigarettes” throughout; and rewrote the last sentence in subsection (6), which formerly read: “The court may, in addition to the penalties provided herein, require the minor and the minor’s parents or legal guardian to attend tobacco awareness programs or to perform community service in programs related to tobacco awareness.”

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

CASE NOTES

Cited *State v. Doe (In re Doe)*, 145 Idaho 980, 188 P.3d 922 (Ct. App. 2008).

§ 39-5704. Permitting of tobacco products or electronic smoking devices retailers. — (1) It shall be unlawful to sell or distribute or offer tobacco products or electronic smoking devices for sale or distribution at retail or to possess tobacco products or electronic smoking devices with the intention of selling at retail without having first obtained a tobacco product or electronic smoking device permit from the department, which shall be the only retail tobacco product or electronic smoking device permit or license required. Provided however, this section shall not be deemed to require a wholesaler or manufacturer's representative or employees who, in the course of their employment, stock shelves and replenish tobacco products or electronic smoking devices at a permittee's place of business to obtain a permit.

(2) The department shall administer the permitting of tobacco product or electronic smoking device retailers and shall be authorized to ensure compliance with this chapter. The department may promulgate rules in compliance with chapter 52, title 67, Idaho Code, regarding permitting of tobacco product or electronic smoking device retailers, inspections, and compliance checks, effective training, and employment practices under this chapter.

(3) Permits shall be issued annually for each business location to ensure compliance with the requirements of this chapter. A copy of this chapter, rules adopted by the department, appropriate signage required by this chapter, and any materials deemed necessary shall be provided with each permit issued.

(4) A separate permit must be obtained for each place of business and is nontransferable to another person, business, or location.

(5) Permittees may display the permit in a prominent location.

(6) A permittee may display a sign in each location within a place of business where tobacco products or electronic smoking devices are sold or distributed. A sign may be clearly visible to the customer and the seller and shall state: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES TO PERSONS

UNDER THE AGE OF EIGHTEEN (18) YEARS. PROOF OF AGE REQUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES TO A MINOR IS SUBJECT TO STRICT FINES AND PENALTIES. MINORS ARE SUBJECT TO FINES AND PENALTIES.”

(7) Permittees are responsible to educate employees as to the requirements of this chapter.

(8) It shall be unlawful for the permittee to allow employees who are minors to sell or distribute tobacco products or electronic smoking devices. Exception: Employees who are minors may possess but not sell or distribute tobacco products or electronic smoking devices in the course of employment, for such duties as stocking shelves or carrying purchases to customers’ vehicles.

History.

I.C., § 39-5704, as added by 1998, ch. 418, § 2, p. 1316; am. 2020, ch. 318, § 4, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5704 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2020 amendment, by ch. 318, substituted “products or electronic smoking device retailers” for “product retailers” at the end of the section heading; inserted “or electronic smoking devices” following “tobacco products” and inserted “products or electronic smoking devices” following “tobacco” throughout the section; and deleted “for no charge” near the beginning of the first sentence in subsection (3).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

CASE NOTES

Commerce Clause.

The legislature passed the prevention of minors' access to tobacco act in an effort to prevent minors from accessing tobacco products, in part by regulating who is authorized to sell tobacco. This section is concerned with the introduction of any tobacco products into Idaho by anyone not first obtaining a tobacco permit; the act is a non-discriminatory statute regulating the off-reservation conduct of a Native American. *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109, cert. denied, 562 U.S. 835, 131 S. Ct. 150, 178 L. Ed. 2d 37 (2010).

§ 39-5705. Sale or distribution of tobacco products or electronic smoking devices to a minor. — (1) It shall be unlawful to sell, distribute, or offer tobacco products or electronic smoking devices to a minor.

(2) It shall be an affirmative defense that the seller of a tobacco product or an electronic smoking device to a minor in violation of this section had requested, examined, and reasonably relied upon a photographic identification from such person establishing that the person is at least eighteen (18) years of age prior to selling such person a tobacco product or an electronic smoking device. The failure of a seller to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a tobacco product or an electronic smoking device to such person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

History.

I.C., § 39-5705, as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 1, p. 74; am. 2012, ch. 39, § 3, p. 118; am. 2020, ch. 318, § 5, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5705 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2012 amendment, by ch. 39, inserted “and electronic cigarettes” in the section heading, inserted “or electronic cigarettes” in subsection (1), and inserted “or an electronic cigarette” three times in subsection (2).

The 2020 amendment, by ch. 318, substituted “products or electronic smoking devices” for “products and electronic cigarettes” in the section heading and substituted “electronic smoking device” for “electronic cigarette” and “electronic smoking devices” for “electronic cigarettes” throughout the section.

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

Section 4 of S.L. 2001, ch. 39 declared an emergency retroactively to January 1, 2001 and approved March 8, 2001.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors. [66 A.L.R.6th 315](#).

§ 39-5706. Vendor-assisted sales. — (1) It shall be unlawful to sell or distribute tobacco products or electronic smoking devices by any means other than vendor-assisted sales where the customer has no access to the product except through the assistance of the seller.

(2) On and after January 1, 2020, it shall be unlawful to sell or distribute tobacco products or electronic smoking devices from vending machines or self-service displays.

(3) Stores with tobacco products or electronic smoking devices comprising at least seventy-five percent (75%) of total merchandise are exempt from requiring vendor-assisted sales, if minors are not allowed in the store and such prohibition is posted clearly on all entrance doors.

History.

I.C., § 39-5706, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 4, p. 118; am. 2020, ch. 318, § 6, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5706 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2012 amendment, by ch. 39, inserted “or electronic cigarettes” in subsections (1) and (4); deleted the former second sentence of subsection (2), which read: “From January 1, 1999, to December 31, 1999, vending machines shall be located in a place not accessible to persons under the age of nineteen (19) years”; and added subsection (3), redesignating the subsequent subsections accordingly.

The 2020 amendment, by ch. 318, substituted “electronic smoking devices” for “electronic cigarettes” near the beginning of subsection (1); rewrote subsection (2), which formerly read: “On and after January 1, 2000, it shall be unlawful to sell or distribute tobacco products from a vending machine”; deleted former subsections (3) and (4), which read: “(3) On and

after January 1, 2013, it shall be unlawful to sell or distribute electronic cigarettes from a vending machine. (4) It shall be unlawful to sell or distribute tobacco products or electronic cigarettes from self-service displays”; redesignated former subsection (5) as present subsection (3); and inserted “or electronic smoking devices” near the beginning of subsection (3).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

§ 39-5707. Opened packages and samples. — (1) It shall be unlawful to sell or distribute tobacco products or electronic smoking devices for commercial purposes other than in the federally required sealed package provided by the manufacturer with all the required warning labels and health warnings.

(2) It shall be unlawful to sell or distribute tobacco products or electronic smoking devices for free or below the cost of such products to the sellers or distributors of the products for commercial or promotional purposes to members of the general public in public places or at public events.

History.

I.C., § 39-5707, as added by 1998, ch. 418, § 2, p. 1316; am. 2020, ch. 318, § 7, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5707 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2020 amendment, by ch. 318, inserted “or electronic smoking devices” following “tobacco products” near the beginning of subsections (1) and (2).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor’s signature.

§ 39-5708. Civil penalties for violations of permit. — (1) Any permittee who fails to comply with any part of this chapter or any current state or local law or rule or regulation regarding the sale or distribution of tobacco products or electronic smoking devices shall be subject to a civil penalty as provided in this section or have their permit suspended, pursuant to compliance with the contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, or both.

(2) If a seller who is not a permittee violates [section 39-5705, Idaho Code](#), and sells or distributes tobacco products or electronic smoking devices to a minor, then the seller shall be fined one hundred dollars (\$100).

(3) In the case of a first violation, the permittee shall be notified in writing of penalties to be levied for further violations.

(4) In the case of a second violation, the permittee shall be fined two hundred dollars (\$200) and shall be notified in writing of penalties to be levied for further violations. For a violation of [section 39-5705, Idaho Code](#), the permittee shall not be fined if the permittee can show that a training program was in place for the employee and that the permittee has a form signed by that employee on file stating that the employee understands the tobacco product or electronic smoking device laws dealing with minors and the unlawful purchase of tobacco products or electronic smoking devices, but the permittee shall be notified in writing of penalties to be levied for any further violations. If no such training is in place, the permittee shall be fined two hundred dollars (\$200).

(5) In the case of a third violation in a two (2) year period, the permittee shall be fined two hundred dollars (\$200) and the permit may be suspended for up to seven (7) days. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined four hundred dollars (\$400). Effective training and employment practices by the permittee, as determined by the department, shall be a mitigating factor in determining permit suspension. Tobacco product or electronic smoking device retailers must remove all tobacco products or electronic smoking devices from all areas accessible to or visible to the public while the permit is suspended.

(6) In the case of four (4) or more violations within a two (2) year period, the permittee shall be fined four hundred dollars (\$400) and the permit shall be revoked until such time that the permittee demonstrates an effective training plan to the department, but in no case shall the revocation be for less than thirty (30) days. Tobacco product or electronic smoking device retailers must remove all tobacco products or electronic smoking devices from all areas accessible to or visible to the public while the permit is revoked.

(7) All moneys collected for violations pursuant to this section shall be remitted to the prevention of minors' access to tobacco products or electronic smoking devices fund created in [section 39-5711, Idaho Code](#).

History.

[I.C., § 39-5708](#), as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 2, p. 74; am. 2012, ch. 39, § 5, p. 118; am. 2020, ch. 318, § 8, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 39-5708 was repealed. See Prior Laws, § 39-5701.

Amendments.

The 2012 amendment, by ch. 39, inserted “Civil penalty for violations relating to electronic cigarettes” in the section heading; designated the existing introductory paragraph as (1), redesignating the subsequent subsections accordingly; and, in subsection (2), inserted “or electronic cigarettes” and “then.”

The 2020 amendment, by ch. 318, deleted “Civil penalty for violations relating to electronic cigarettes” from the end of the section heading; inserted “or electronic smoking devices” following “tobacco products” and inserted “product or electronic smoking device” or “products or electronic smoking devices” following “tobacco” throughout the section; substituted “electronic smoking devices” for “electronic cigarettes” near the middle of subsection (2).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

Section 4 of S.L. 2001, ch. 39 declared an emergency retroactively to January 1, 2001 and approved March 8, 2001.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors. [66 A.L.R.6th 315](#).

§ 39-5709. Criminal penalties for violations without a permit. — Sale or distribution of tobacco products or electronic smoking devices, or any violation of this chapter, without a permit is considered by the state of Idaho as an effort to subvert the state's public purpose to prevent minor's access to tobacco products or electronic smoking devices.

(1) The sale or distribution of tobacco products or electronic smoking devices without a permit shall constitute a misdemeanor punishable by imprisonment not exceeding six (6) months in the county jail, a fine of three hundred dollars (\$300), or by both such fine and imprisonment. If the sale or distribution of tobacco products or electronic smoking devices was to a minor, the fine shall be no less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). The provisions of this section shall not be applicable to an employee of the business engaged in the sale of tobacco products or electronic smoking devices if the sale occurred during the course of such employment and the seller does not have an ownership interest in the business.

(2) In addition to the penalties set forth in subsection (1) of this section, the court may impose an additional fine of one thousand dollars (\$1,000) per day beginning the day following the date of citation as long as the illegal tobacco products or electronic smoking devices sales or distribution continues. The first seven (7) days of additional fines may be suspended, provided that the business or seller is able to prove that the business or seller has applied for the permit within seven (7) days of the citation.

History.

I.C., § 39-5709, as added by 1998, ch. 418, § 2, p. 1316; am. 2020, ch. 318, § 9, p. 905.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 318, inserted “or electronic smoking devices” following “tobacco products” throughout the section.

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

§ 39-5710. Conduct of enforcement actions. — (1) It is the intent of the legislature that law enforcement agencies, the attorney general, and the department shall enforce this chapter and rules promulgated pursuant thereto in a manner that can reasonably be expected to significantly reduce the extent to which tobacco products and electronic smoking devices are sold or distributed to minors.

(2) Law enforcement agencies may conduct random unannounced inspections at locations where tobacco products or electronic smoking devices are sold or distributed to ensure compliance with this chapter. A copy of all citations issued under this chapter shall be submitted to the department.

(3) The department shall conduct at least one (1) random unannounced inspection per year at all locations where tobacco products or electronic smoking devices are sold or distributed at retail to ensure compliance with this chapter. The department shall conduct inspections for minor exempt permittees without the assistance of a minor. The department shall conduct inspections for all other permittees with the assistance of a minor. Each year, the department shall conduct random unannounced inspections equal to the number of permittees multiplied by the violation percentage rate reported for the previous year multiplied by a factor of ten (10). Local law enforcement agencies are encouraged to contract with the department to perform these required inspections.

(4) Minors may assist with random unannounced inspections with the written consent of a parent or legal guardian. When assisting with these inspections, minors shall not provide false identification nor make any false statement regarding their age.

(5) Citizens may file a written complaint of noncompliance of this chapter with the department, or with a law enforcement agency. Permit holders under [26 U.S.C. 5712](#) may file written complaints relating to delivery sales to the department or the attorney general's offices. Complaints shall be investigated and the proper enforcement actions taken.

(6) Within a reasonable time, not later than two (2) business days after an inspection has occurred, a representative of the business inspected shall be informed in writing of the results of the inspection.

(7) The attorney general or his designee, or any person who holds a permit under [26 U.S.C. 5712](#), may bring an action in district court in Idaho to prevent or restrain violations of this chapter by any person or by any person controlling such person.

History.

[I.C., § 39-5710](#), as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 3, p. 74; am. 2003, ch. 159, § 2, p. 449; am. 2003, ch. 273, § 2, p. 728; am. 2012, ch. 39, § 6, p. 118; am. 2020, ch. 318, § 10, p. 905.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 159, rewrote subsection (3) to allow for the inspection of minor exempt permittees without the assistance of a minor.

The 2003 amendment, by ch. 273, inserted “the attorney general” in subsection (1); inserted the present second sentence in subsection (5); and added subsection (7).

The 2012 amendment, by ch. 39, inserted “and electronic cigarettes” near the end of subsection (1) and inserted “or electronic cigarettes” in the first sentence in subsection (2).

The 2020 amendment, by ch. 318, substituted “electronic smoking devices” for “electronic cigarettes” near the end of subsection (1) and near the middle of the first sentence in subsection (2); and inserted “or electronic smoking devices” near the middle of the first sentence in subsection (3).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

Section 4 of S.L. 2001, ch. 39 declared an emergency retroactively to January 1, 2001 and approved March 8, 2001.

§ 39-5711. Funding and creation of prevention of minors' access to tobacco products or electronic smoking devices fund. — There is hereby created the prevention of minors' access to tobacco products or electronic smoking devices fund in the state treasury. Moneys in the fund shall be used to fund the administration, inspections and enforcement of this chapter. Moneys in the fund may be expended only pursuant to appropriation. The fund shall consist of:

(1) The current federal funds that are available for inspections or for the prevention of minors' access to tobacco products or electronic smoking devices shall be utilized by the department; (2) The fines from the civil penalties pursuant to [section 39-5708, Idaho Code](#); and (3) Moneys from any other source.

History.

[I.C., § 39-5711](#), as added by 1998, ch. 418, § 2, p. 1316; am. 2020, ch. 318, § 11, p. 905.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 318, inserted “products or electronic smoking devices” near the end of the section heading, near the end of the first sentence in the introductory paragraph, and near the end of subsection (1).

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

§ 39-5712. Severability. — If any section or provision of this chapter is held invalid, such invalidity shall not affect other sections or provisions of this chapter.

History.

I.C., § 39-5712, as added by 1998, ch. 418, § 2, p. 1316.

STATUTORY NOTES

Effective Dates.

S.L. 1998, chapter 418, became law without the governor's signature.

§ 39-5713. Local ordinances. — Nothing in this chapter shall be construed to prohibit local units of government from passing ordinances which are more stringent than the provisions of this chapter. Provided however, local units of government shall not have the power to require a permit or license for the sale or distribution of tobacco products or electronic cigarettes.

History.

I.C., § 39-5713, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 7, p. 118.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 39, added “or electronic cigarettes” at the end of the last sentence.

Effective Dates.

Section 3 of S.L. 1998, ch. 418, became effective without the governor’s signature, and provided: “This act shall be in full force and effect on and after January 1, 1999. The Department of Health and Welfare is hereby authorized to begin rule promulgation and undertake other necessary tasks to administer the provisions of this act prior to January 1, 1999.”

§ 39-5714. Requirements for delivery sales. — (1) No permittee shall make a delivery sale of tobacco products or electronic smoking devices to any individual who is under age eighteen (18) years in this state.

(2) Each permittee taking a delivery sale order shall comply with: the age verification requirements set forth in [section 39-5715, Idaho Code](#); the disclosure and notice requirements set forth in [section 39-5716, Idaho Code](#); the shipping requirements set forth in [section 39-5717, Idaho Code](#); the registration and reporting requirements set forth in [section 39-5718, Idaho Code](#); all tax collection requirements provided by title 63, Idaho Code; and all other laws of the state of Idaho generally applicable to sales of tobacco products or electronic smoking devices that occur entirely within Idaho, including but not limited to those laws imposing excise taxes, sales and use taxes, licensing and tax stamping requirements, and escrow or other payment obligations.

History.

[I.C., § 39-5714](#), as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 8, p. 118; am. 2020, ch. 318, § 12, p. 905.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 39, added the last sentence in subsection (1).

The 2020 amendment, by ch. 318, in subsection (1), inserted “or electronic smoking devices” near the beginning of the first sentence and deleted the second sentence, which read: “No seller shall make a delivery sale of electronic cigarettes to any minor in this state”; and inserted “or electronic smoking devices” near the end of subsection (2).

CASE NOTES

Cited [State v. Maybee, 148 Idaho 520, 224 P.3d 1109 \(2010\)](#).

§ 39-5715. Age verification requirements. — No permittee shall mail or ship tobacco products or electronic smoking devices in connection with a delivery sale order unless, before mailing or shipping such tobacco products or electronic smoking devices, the permittee accepting the delivery sale order first obtains from the prospective customer a certification that includes proof of age that the purchaser is at least eighteen (18) years old, the credit or debit card used for payment has been issued in the purchaser's name, and the address to which the tobacco products or electronic smoking devices are being shipped matches the credit card company's address for the cardholder or employs technology that requires and authenticates independent, third-party age and identity verification services, comparing data against third-party sources.

History.

I.C., § 39-5715, as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 9, p. 118; am. 2020, ch. 318, § 13, p. 905.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 39, added the subsection (1) designation to the existing provisions and added subsection (2).

The 2020 amendment, by ch. 318, rewrote the section to the extent that a detailed comparison is impracticable.

§ 39-5716. Disclosure and notice requirements. — For all delivery sales a permittee shall post on any advertisement or website:

(1) The cautionary language for signs under [section 39-5704\(6\), Idaho Code](#); (2) A prominent and clearly legible statement that consists of one (1) of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act ([15 U.S.C. section 1333\(a\)\(1\)](#)) rotated on a quarterly basis; (3) A prominent and clearly legible statement that sales of cigarettes are taxable under chapter 25, title 63, Idaho Code, and an explanation of how such tax has been, or is to be paid, with respect to such delivery sale.

History.

[I.C., § 39-5716](#), as added by 2003, ch. 273, § 3, p. 728.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-5717. Shipping requirements — Tobacco products or electronic smoking devices. — Each permittee who mails or ships tobacco products or electronic smoking devices in connection with a delivery sale order shall include as part of the shipping documents a clear and conspicuous statement providing as follows:

“TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS, AND REQUIRES THE PAYMENT OF TAXES PURSUANT TO CHAPTER 25, TITLE 63, IDAHO CODE. PERSONS VIOLATING THIS MAY BE CIVILLY AND CRIMINALLY LIABLE.”

Anyone delivering any such container distributes tobacco products or electronic smoking devices as defined in [section 39-5702\(5\), Idaho Code](#), and is subject to the terms and requirements of this chapter. If a permittee taking a delivery sale order also delivers the tobacco products or electronic smoking devices without using a third-party delivery service, the permittee shall comply with all the requirements of vendor-assisted sales as defined in [section 39-5702\(15\), Idaho Code](#).

History.

[I.C., § 39-5717](#), as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 10, p. 118; am. 2020, ch. 318, § 14, p. 905.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 39, inserted “Tobacco products” in the section heading and substituted “39-5702(16), Idaho Code” for “39-5702(14), Idaho Code” near the end of the section.

The 2020 amendment, by ch. 318, inserted “or electronic smoking devices” following “tobacco products” in the section heading and throughout the section; and substituted “[section 39-5702\(15\), Idaho Code](#)”

for “39-5702(16), Idaho Code” at the end of the last sentence in the last paragraph.

Idaho Code § 39-5717A

**§ 39-5717A. Shipping requirements — Electronic cigarettes.
[Repealed.]**

Repealed by S.L. 2020, ch. 318, § 15, effective July 1, 2020.

History.

I.C., § 39-5717A, as added by 2012, ch. 39, § 11, p. 118.

§ 39-5718. Registration and reporting requirements. — (1) Prior to making delivery sales or shipping tobacco products or electronic smoking devices in connection with any such sales, every business shall obtain a permit from the department and file with the state tax commission a statement setting forth the permittee's name, trade name, and the address of the business's principal place of business and any other place of business.

(2) No later than the tenth day of each calendar month, each permittee that has made a delivery sale or shipped or delivered tobacco products or electronic smoking devices in connection with any such sale during the previous calendar month shall file with the department and the state tax commission a memorandum or a copy of the invoice that provides for each and every such delivery sale: (a) The name and address of the individual to whom the delivery sale was made; (b) The brand or brands of the tobacco products or electronic smoking devices that were sold in such delivery sale; and (c) The quantity of tobacco products or electronic smoking devices that were sold in such delivery sale.

(3) Any tobacco products or electronic smoking devices sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter shall be forfeited to the state of Idaho.

History.

I.C., § 39-5718, as added by 2003, ch. 273, § 3, p. 728; am. 2020, ch. 318, § 16, p. 905.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101 et seq.

Amendments.

The 2020 amendment, by ch. 318, inserted “or electronic smoking devices” following “tobacco products” throughout the section.

CASE NOTES

Cited [State v. Maybee, 148 Idaho 520, 224 P.3d 1109 \(2010\).](#)

Idaho Code Ch. 58

• [Title 39](#)», « [Ch. 58](#) »

Chapter 58

HAZARDOUS WASTE FACILITY SITING

Sec.

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Idaho Code § 39-5801

§ 39-5801. Short title. — This chapter shall be known and may be cited as the “State Hazardous Waste Facility Siting Act.”

History.

I.C., § 39-5801, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5802. Legislative intent. — (1) The legislature of the state of Idaho hereby finds that adverse public health and environmental impacts can result from the improper land disposal of hazardous waste and that the need for establishing safe sites with adequate capacity for the disposal of hazardous waste is a matter of statewide concern, and the provisions of this chapter are therefore enacted to provide an effective method of establishing such sites.

(2) It is the intent of the legislature of the state of Idaho that generators of hazardous waste be encouraged to use on-site and off-site alternative treatment methods to reduce the amount of hazardous waste that must be discharged into the environment and to reduce associated hazards to the health and welfare of the citizens of this state. Alternative management technologies which detoxify, stabilize and reduce the amount of hazardous waste that must be buried are available. For such purpose, the provisions of this chapter are enacted to allow the development of safe alternative methods for the treatment of hazardous waste and to provide a means for the designation of hazardous waste disposal sites when such methods are unable to obviate the need for hazardous waste disposal on land. Whereas the state of Idaho may be responsible for the perpetual care of hazardous waste land disposal facilities, alternative technologies such as incineration, resource recovery, or physical, chemical or biological degradation should be implemented to the maximum extent possible.

(3) It is the intent of the legislature that the site license process not duplicate the existing hazardous waste management act permitting process as set forth in [section 39-4409, Idaho Code](#). The site license is a preliminary, general review which is not based on the type of specific, detailed technical information required for the hazardous waste management act permit.

History.

[I.C., § 39-5802](#), as added by 1985, ch. 113, § 1, p. 220; am. 1987, ch. 103, § 1, p. 207.

§ 39-5803. Definitions. — As used in this chapter:

(1) “Panel” means the site review panel created in [section 39-5811 \[39-5812\], Idaho Code](#).

(2) “Committee” means the state hazardous waste management planning committee created in [section 39-5805, Idaho Code](#).

(3) “Department” means the department of environmental quality.

(4) “Designated facility” means a hazardous waste treatment, storage or disposal facility which has received a permit or has interim status under title II of the solid waste disposal act or has a permit from the state authorized under section 3006 of title II of the solid waste disposal act ([42 U.S.C.A. section 3006](#)) [[42 U.S.C. section 6926](#)].

(5) “Director” means the director of the department of environmental quality.

(6) “Disposal” is defined in [section 39-4403, Idaho Code](#).

(7) “Disposal facility” means a facility or a part of a facility at which managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

(8) “Generator” is defined in [section 39-4403, Idaho Code](#).

(9) “Hazardous waste” is defined in [section 39-4403, Idaho Code](#).

(10) “Hazardous waste management” is defined in [section 39-4403, Idaho Code](#).

(11) “On-site” means on the same or geographically contiguous property which may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. Noncontiguous pieces of property owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access is also considered on-site property.

(12) “Operator” means the person responsible for the overall operation of a disposal, treatment or storage facility with approval of the director either by contract or permit.

(13) “Person” is defined in [section 39-4403, Idaho Code](#).

(14) “Plan” means the state hazardous waste management plan prepared under the provisions of [section 39-5806, Idaho Code](#).

(15) “Storage” is defined in [section 39-4403, Idaho Code](#).

(16) “Storage facility” means a facility or part of a facility at which managed hazardous waste, as defined by rule and regulation is subject to storage.

(17) “Title II of the solid waste disposal act” means sections 1001 through 8006 of public law 89-272, [42 U.S.C. 6901, 6902 through 6910, 6912 through 6940 and 6942 through 6986](#).

For purposes of this chapter, words and phrases defined in [section 39-4403, Idaho Code](#), shall carry the same meaning when used in this chapter unless the context clearly denotes otherwise.

History.

[I.C., § 39-5803](#), as added by 1985, ch. 113, § 1, p. 220; am. 2001, ch. 103, § 50, p. 253.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

Compiler’s Notes.

The bracketed insertion in subsection (1) was added by the compiler to correct the statutory reference.

The bracketed insertion in subsection (4) was added by the compiler to supply the correct current codification of the referenced federal act.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-5804. Methods of hazardous waste management. — The department and the committee in the conduct of their duties under the provisions of this chapter and under the provisions of chapter 44, title 39, Idaho Code, shall assist in encouraging, developing and implementing methods of hazardous waste management which are environmentally sound, which maximize the utilization of valuable resources and which encourage resource conservation including source separation and waste reduction.

History.

I.C., § 39-5804, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5805. State hazardous waste management planning committee — Creation — Members. — (1) The state hazardous waste management planning committee is hereby created in the department. The committee shall represent diverse geographical areas of the state. No later than September 1, 1985, the governor shall, subject to the advice and consent of the senate, appoint seventeen (17) members to the committee consisting of the following representatives:

- (a) One (1) representative of city government;
 - (b) One (1) representative of county government; (c) One (1) hazardous waste transporter;
 - (d) One (1) hazardous waste generator;
 - (e) One (1) hazardous waste treatment, storage, or disposal facility operator; (f) One (1) member of an environmental group;
 - (g) One (1) member of a conservation group;
 - (h) Two (2) members of the general public;
 - (i) The director of the department or his designee; (j) The director of the department of water resources or his designee; (k) One (1) licensed professional engineer;
 - (l) A faculty member of a university or college in this state well versed in geology, hydrology or other environmental matters; (m) The director of the Idaho transportation department or his designee; (n) One (1) representative of the mining industry; (o) One (1) representative of the forest products industry; and (p) One (1) representative of the agricultural industry.
- (2) A vacancy occurring on the committee shall be filled in the same manner as the original appointment.
- (3) The chairman of the committee shall be elected by the members of the committee and the chairman shall be a voting member of the committee.
- (4) Members of the committee who are not state employees shall be entitled to receive compensation as provided in [section 59-509\(b\), Idaho](#)

Code.

(5) The committee by majority vote shall establish operating procedures. The operating procedures shall be made available for public review.

(6) In the conduct of its business, the committee shall solicit the advice of, and consult periodically with cities, counties and persons within the state for the purpose of receiving information or advice that may be helpful in the preparation of the plan.

(7) Employees of the department of environmental quality, department of water resources and the transportation department shall assist the committee on a priority basis.

(8) The committee shall disband after final approval of the plan by the legislature.

(9) Upon petition to the director and the director's recommendation to the governor, the governor shall appoint a committee in the same manner as the original committee to amend or revise the plan.

(10) The committee shall hold its first meeting as soon as practicable after confirmation by the senate.

History.

I.C., § 39-5805, as added by 1985, ch. 113, § 1, p. 220; am. 2001, ch. 103, § 51, p. 253.

STATUTORY NOTES

Cross References.

Department of water resources, § 42-1701 et seq.

Transportation department, § 40-501 et seq.

§ 39-5806. State hazardous waste siting management plan — Preparation — Inclusions — Studies — Public hearings — Summary — Amendments — Recommendation. — (1) Not later than January 1, 1987, the committee shall prepare a state hazardous waste siting management plan.

(2) The plan shall:

(a) Provide for a reasonable geographic distribution of hazardous waste treatment, storage, or disposal facilities to meet existing and probable future needs.

(b) Be based upon location of generators, health and safety, economics of transporting, types of waste and existing hazardous waste treatment, storage, or disposal facilities.

(c) Include necessary legislative, administrative and economic mechanisms, a timetable to carry out the plan.

(3) The committee may instruct the department of environmental quality, the department of water resources and the transportation department to complete studies as considered reasonably necessary for the completion of the plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types and quantities of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management practices and costs, including treatment and disposal, within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations and constraints. Projection of needs shall consider the types and sizes of hazardous waste treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for additional privately owned or state owned treatment, storage, or disposal facilities.

(d) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(e) An investigation and analysis of methods, incentives or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(f) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) Upon completion of the plan, the committee shall publish a notice after giving twenty (20) days' notice as provided in [section 60-109, Idaho Code](#), in a number of newspapers and shall issue a statewide news release announcing the availability of the plan for inspection by interested persons. The announcement shall indicate where and how the plan may be obtained or reviewed and shall indicate that not less than three (3) public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until sixty (60) days have elapsed from the date of the notice announcing the availability of the plan.

(5) After public hearings, the committee shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the plan as necessary and shall formally adopt the plan, and shall submit the plan to the legislature at the first regular session of the legislature following adoption of the plan.

History.

[I.C., § 39-5806](#), as added by 1985, ch. 113, § 1, p. 220; am. 2001, ch. 103, § 52, p. 253.

STATUTORY NOTES

Cross References.

Department of water resources, § 42-1701 et seq.

Transportation department, § 40-501 et seq.

§ 39-5807. Amendment or rejection of plan. — The legislature shall amend, adopt or reject the plan by passage of a concurrent resolution at the regular legislative session when it receives the plan. If the legislature amends or rejects the plan, it shall indicate its reasons for amendment or rejection by passage of a concurrent resolution and return the plan to the committee.

History.

I.C., § 39-5807, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5808. Siting license required. — No person shall construct, expand, enlarge or alter a commercial hazardous waste disposal, treatment or storage facility or any on-site land disposal facility for wastes listed pursuant to section 201(d)(2) and (e), as modified by section 209 of “The Hazardous and Solid Waste Amendments of 1984,” as enacted by the U.S. congress, without a siting license from the department. The owner or operator of the facility or site rather than the builder shall be responsible for obtaining the license. Facilities exempted from permitting under the provisions of [section 39-4409, Idaho Code](#), shall not require a license under the provisions of this chapter.

History.

[I.C., § 39-5808](#), as added by 1985, ch. 113, § 1, p. 220.

STATUTORY NOTES

Federal References.

The extant provisions of sections 201 and 209 of the hazardous and solid waste amendments of 1984, referred to in this section, are codified as [42 USCS § 6924](#).

§ 39-5809. Permits and licenses — Issuance prior to adoption of plan.

— The director may issue permits under the provisions of chapter 44, title 39, Idaho Code, or licenses pursuant to this chapter, for existing or proposed hazardous waste treatment, storage or disposal facilities and other authorized operations before the adoption of the plan by the committee.

History.

I.C., § 39-5809, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5810. Licenses — Issuance after adoption of plan. — After the plan has been adopted by the committee, the director shall not issue a license under the provisions of this chapter for a hazardous waste treatment, storage or disposal facility until the director has made a determination that the action is consistent with the adopted hazardous waste management plan. The director may exempt classes or categories of hazardous waste treatment, storage or disposal facilities from complying with the hazardous waste management plan if the exemption is in the public interest and consistent with state and federal law. If the director exempts classes or categories of hazardous waste treatment, storage or disposal facilities from complying with the hazardous waste management plan, rules and regulations shall be promulgated in compliance with chapter 52, title 67, Idaho Code, specifically indicating the exemption.

History.

I.C., § 39-5810, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5811. Expansion, enlargement or alteration of treatment, storage, or disposal facility — Review — Siting licenses. — (1) A hazardous waste treatment, storage, or disposal facility in existence on July 1, 1985, shall not require a review under the provisions of this chapter.

(2) The expansion, enlargement, or alteration of a hazardous waste treatment, storage, or disposal facility in existence on July 1, 1985, constitutes a new proposal for which a siting license is required.

History.

I.C., § 39-5811, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5812. Site review panels — Members, chairman, quorum, meetings, staff. — (1) A site review panel shall be established to insure public input in the licensing process and to recommend to the director conditions which should be included in the siting license. Such conditions may include measures to mitigate public concerns for the following types of facilities:

- (a) All commercial hazardous waste disposal facilities not in existence prior to July 1, 1985;
- (b) All commercial hazardous waste treatment or storage facilities not in existence prior to July 1, 1985;
- (c) Any on-site disposal of wastes listed pursuant to section 201(d) (2) and (e) as modified by section 209 of “The Hazardous and Solid Waste Amendments of 1984,” as enacted by the U.S. congress, for sites not in existence prior to July 1, 1985;
- (d) Any significant expansion of the above-listed facilities after July 1, 1985.

A panel shall consist of ten (10) members to be appointed as provided in subsections (2) and (3) of this section.

(2) The following six (6) members shall serve on every panel established to review a siting license application:

- (a) Three (3) members shall be representatives of this state, one (1) each from the department of environmental quality, the department of water resources and the Idaho transportation department. A member who is a representative of this state shall be appointed by each of the directors of the respective departments and a vacancy shall be filled as necessary by the appropriate director. A member who is a representative of the state shall be appointed to serve on site review panels for a period of two (2) years and may be appointed for additional two (2) year periods. In addition, a member who is a representative of the state may serve beyond the expiration of the member’s two (2) year period of service for so long a period of time as is necessary to complete action on siting license applications pending at the expiration of the member’s term.

(b) Three (3) members shall be public members appointed by the governor with the advice and consent of the senate. One (1) public member shall be a geologist or hydrologist, one (1) an engineer, and one (1) a representative of industries which generate hazardous waste. One (1) public member shall be on the faculty of an institution of higher education in this state. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointment. A member who is a public member shall be appointed to serve on site review panels for a period of three (3) years and may be appointed for additional three (3) year periods.

(3) The following four (4) members shall serve on a panel which is established to consider a particular siting license application:

(a) Two (2) members shall be appointed by the city council of the city located closest to or in which the hazardous waste treatment, storage, or disposal facility is proposed to be located, at least one (1) of whom shall be a resident of the city. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(b) Two (2) members shall be residents of the county where the hazardous waste treatment, storage, or disposal facility is proposed to be located and shall be appointed by the board of commissioners of the county. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(4) The member appointed as the representative of the state from the department shall be chairman of each panel and shall notify the city council of the nearest city and the board of county commissioners of a siting license application filed with the department, and shall instruct the city and county to appoint the necessary representatives to a panel. The chairman shall be a nonvoting member of the panel except when the chairman's vote is necessary to break a tie vote.

(5) Six (6) of the ten (10) members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of six (6)

members of the panel shall constitute a legal action of the panel. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(6) The director shall make staff available to assist a panel in carrying out its responsibilities.

(7) Members of the panel who are not state employees shall be entitled to receive compensation as provided in [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 39-5812](#), as added by 1985, ch. 113, § 1, p. 220; am. 1987, ch. 103, § 2, p. 207; am. 2001, ch. 103, § 53, p. 253.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

Department of water resources, § 42-1701 et seq.

Open meetings law, § 74-201 et seq.

Transportation department, § 40-501 et seq.

Federal References.

The extant provisions of sections 201 and 209 of the hazardous and solid waste amendments of 1984, referred to in paragraph (1)(e), are codified as [42 USCS § 6924](#).

§ 39-5813. Siting license application — Fee — Rules and regulations.

— (1) An application for a siting license shall include:

- (a) The name and residence of the applicant;
- (b) The location of the proposed hazardous waste treatment, storage, or disposal facility;
- (c) Engineering or hydrogeologic information to indicate compliance with technical criteria as adopted in the hazardous waste management plan if applicable;
- (d) A description of the types of wastes proposed to be handled at the facility;
- (e) Information showing that harm to scenic, historic, cultural or recreational values is not substantial or can be mitigated;
- (f) Information showing that the risk and impact of accident during transport of hazardous waste is not substantial or can be mitigated; and
- (g) Information showing that the impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated.

(2) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(3) The application shall be accompanied by a siting license fee. The director shall establish by rule, the scale for determining the siting license application fee. The fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be based on the cost to the department of reviewing the siting license application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon a siting license application. The director may promulgate rules and regulations in

compliance with chapter 52, title 67, Idaho Code, in order to implement and administer the provisions of this section.

History.

I.C., § 39-5813, as added by 1985, ch. 113, § 1, p. 220; am. 1987, ch. 103, § 3, p. 207.

§ 39-5814. Duties of director upon receipt of a siting license application — Recommendation. — (1) Upon receipt of a complete siting license application, the director or an authorized representative of the director shall:

(a) Immediately notify the permanent panel members, the city and/or county in which the hazardous waste treatment, storage, or disposal facility is located or proposed to be located, the state fire marshal, the director of the department of fish and game, the director of the Idaho state police, and each division within the department that has responsibility in land, air or water management, and other appropriate agencies. The notice shall describe the procedure and the schedule based on the complexity of the application by which the siting license may be approved or denied.

(b) Immediately publish a notice that the application has been received, as provided in [section 60-109, Idaho Code](#), in a newspaper having major circulation in the county and the immediate vicinity of the proposed hazardous waste treatment, storage, or disposal facility. The required published notice shall contain a map indicating the location of the proposed hazardous waste treatment, storage, or disposal facility and shall contain a description of the proposed action and the location where the complete application package may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the siting license may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (3) of [section 39-5812, Idaho Code](#). Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) If technical criteria are not applicable, the director shall submit to the panel a draft site license which includes conditions based on the

information submitted in the application. The director shall also recommend to the panel that the license be issued or denied. The draft license submittal shall be made within sixty-five (65) days after a complete application is received.

(4) If technical criteria as adopted in the hazardous waste management plan are applicable, the director shall determine if the proposed facility complies with the criteria. Such determination shall be made within forty-five (45) days after a complete application is received. If the technical criteria are not met, the director shall deny the license and the panel shall be disbanded. If the technical criteria are met, the director shall submit to the panel a draft site license which includes conditions regarding the technical criteria to be met. These conditions may be more stringent than those in the plan if warranted by information provided in the application. The draft license may also include additional conditions based on the information submitted in the application regarding the construction of the facility. The director shall also recommend to the panel that the license be issued or denied. The denial or draft license submittal shall be made within sixty-five (65) days after a complete application is received. The director shall immediately notify the applicant and the chairman of the panel of the denial or draft license submittal.

(5) Within ten (10) days after submittal of a draft license, the panel shall meet to review and establish a timetable for the consideration of the draft site license.

(6) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed hazardous waste treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a siting license may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting license;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in [section 60-109, Idaho Code](#).

(7) Comment and input on the proposed hazardous waste treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for fifteen (15) days after the public hearing date.

(8) The panel shall consider, among other things:

(a) The risk and impact of accident during the transportation of hazardous waste;

(b) The risk of fires or explosions from improper treatment, storage, or disposal methods;

(c) The impact on local units of government where the proposed hazardous waste treatment, storage, or disposal facility is to be located in terms of health, safety, cost and consistency with local planning and existing development. The panel shall also consider city and county ordinances, permits or other requirements and their potential relationship to the proposed hazardous waste treatment, storage, or disposal facility;

(d) The nature of the probable environmental impact.

(9) The panel's primary responsibility shall be to consider the concerns and objections submitted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the facility. The panel may propose conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(10) Within ninety (90) days after creation, the panel shall recommend to the director that the license be issued as proposed, issued with different or additional conditions, or denied. The director shall make a final decision within thirty (30) days after receipt of the panel's recommendation. If the panel recommends different or additional conditions, a clear statement of the need for the condition must be submitted to the director. If the panel recommends denial, a clear statement of the reasons for the denial must be submitted to the director.

(11) The director shall issue a siting license if the director determines that:

- (a) The technical criteria are met;
- (b) The harm to scenic, historic, cultural or recreational values is not substantial or can be mitigated by appropriate license conditions;
- (c) The risk and impact of accident during transportation of hazardous waste is not substantial or can be mitigated with appropriate license conditions;
- (d) The impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated with appropriate license conditions; and
- (e) No other major concerns have been raised by the panel regarding public health or the environment which cannot be mitigated by special license conditions.

(12) An applicant denied a siting license pursuant to this chapter or any person aggrieved by a decision of the director pursuant to this chapter may within twenty-eight (28) days, after all remedies have been exhausted under the provisions of this chapter, seek judicial review under the procedures provided in chapter 52, title 67, Idaho Code.

(13) No permit pursuant to [section 39-4409, Idaho Code](#), shall be issued unless the applicant has been issued a site license.

History.

[I.C., § 39-5814](#), as added by 1985, ch. 113, § 1, p. 220; am. 1987, ch. 103, § 4, p. 207; am. 1993, ch. 216, § 29, p. 587; am. 2000, ch. 469, § 99, p. 1450.

STATUTORY NOTES

Cross References.

Director of department of fish and game, § 36-106.

Director of state police, § 67-2901.

State fire marshal, § 41-254.

§ 39-5815. Notice for and creation of panel after nonrejection or approval of siting license application — Timetable for consideration of proposed facility — Public hearing — Notice — Comment and input — Municipal impact — Considerations — Advice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-5815, as added by 1985, ch. 113, § 1, p. 220, was repealed by S.L. 1987, ch. 103, § 5.

§ 39-5816. Local restrictions on hazardous waste treatment, storage, or disposal facility construction. — An ordinance, permit requirement or other requirement of a city or county shall not prohibit the construction of a hazardous waste treatment, storage, or disposal facility in that city or county.

History.

I.C., § 39-5816, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5817. Coordination and integration with state and federal law.

— The director shall coordinate and integrate the provisions of this chapter for purposes of administration and enforcement with appropriate state and federal law.

History.

I.C., § 39-5817, as added by 1985, ch. 113, § 1, p. 220.

§ 39-5818. Information obtained — Public record. — (1) Except as provided in subsection (2) of this section, information obtained by the department under the provisions of this chapter shall be deemed to be a public record.

(2) A person regulated under the provisions of this chapter may designate a record, site license application, other information, or a portion of a record, site license application, or other information furnished to or obtained by the department or its agents, as being only for the use of the department and the panel. The material shall then be subject to disclosure according to chapter 1, title 74, Idaho Code.

History.

I.C., § 39-5818, as added by 1985, ch. 113, § 1, p. 220; am. 1990, ch. 213, § 49, p. 480; am. 2015, ch. 141, § 97, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in subsection (2) Effective Dates.

Section 111 of S.L. 1990, ch. 213, as amended by § 16 of S.L. 1991, ch. 329, provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993, and that §§ 1, 2, 46 and 47 take effect July 1, 1990.

§ 39-5819. Certification of city, county, or district health departments. — The department may certify a city, county or health district to administer and enforce portions of this chapter and chapter 44, title 39, Idaho Code, but only to the extent consistent with obtaining and maintaining authorization of the state’s hazardous waste management program pursuant to section 3006 of title II of the solid waste disposal act. Certification procedures shall be established by the department by rule [rules] and regulations. The director may rescind certification upon the request of the certified city, county, or health district, or after reasonable notice and hearing, if the director finds that a city, county, or health district is not administering and enforcing the provisions of this chapter or chapter 44, title 39, Idaho Code, or both, as required.

History.

I.C., § 39-5819, as added by 1985, ch. 113, § 1, p. 220.

STATUTORY NOTES

Federal References.

Section 3006 of title II of the solid waste disposal act is codified as 42 USCS § 6924.

Compiler’s Notes.

The bracketed word “rules” in the second sentence was inserted by the compiler.

§ 39-5820. Remedy for devaluation of property caused by approved facility. — (1) Before construction of a hazardous waste treatment, storage, or disposal facility, but in no case later than nine (9) months after approval of a site license for a hazardous waste treatment, storage, or disposal facility, any owner or user of real property adversely affected by approval may bring an action in a district court of competent jurisdiction against the owner of the proposed facility. If the court determines that the planned construction and operation of the hazardous waste treatment, storage, or disposal facility will result in the devaluation of the plaintiff's property or will otherwise interfere with the plaintiff's rights in the property, it shall order the owner to compensate the plaintiff in an amount equal to the value of the plaintiff's loss.

(2) The remedy provided in subsection (1) of this section shall be in addition to other remedies provided by law for owners or users aggrieved by the proposed construction and operation of a hazardous waste treatment, storage or disposal facility.

(3) Nothing in this chapter shall prevent an owner or user of property aggrieved by the construction and operation of a facility from seeking damages that result from a subsequent modification of the design or operation of a facility but such damages are limited to the incremental damage that results from the modification. Any action for such damages under this section shall be brought within nine (9) months after the siting license for modification of the design or operation of the facility is approved.

(4) For the purpose of assessing damages, the value of the rights affected is fixed at the date the siting license is approved and the actual value of the right at that date is the basis for the determination of the amount of damage suffered, and no improvements to the property subsequent to the date of approval of the plans shall be included in the assessment of damages. Similarly, for any subsequent modification of a facility, value is fixed at the date of approval of the siting license.

(5) The owner or operator of a proposed facility may, at any time before an award of damages, abandon the construction or operation of the facility

or any modification and cause the action to be dismissed. As a condition of dismissal, however, the owner or operator shall compensate the plaintiff for any actual damage sustained as a result of construction or operation of the facility before abandonment together with court costs and a reasonable attorney's fee.

(6) Nothing in this chapter shall prevent a court from enjoining any activity at a hazardous waste treatment, storage, or disposal facility that is outside of, or not in compliance with, the terms and conditions of an approved hazardous waste operations permit pursuant to [section 39-4409, Idaho Code](#).

History.

[I.C., § 39-5820](#), as added by 1985, ch. 113, § 1, p. 220.

Chapter 59

IDAHO RURAL HEALTH CARE ACCESS PROGRAM

Sec.

39-5901. Short title.

39-5902. Rural health care access and physician incentive funds.

39-5903. Definitions.

39-5904. Joint health care access and physician incentive grant review board.

39-5905. Scope of rural health care access and physician incentive grant support.

39-5906. Categories of rural health care access and physician incentive grants.

39-5907. Eligibility for grants.

39-5908. Rural health care access and physician incentive applications required.

39-5909. Rural health care access and physician incentive grant award schedule.

39-5910. Rural health care access and physician incentive award criteria.

39-5911. Negotiation. [Repealed.]

39-5912. Fraudulent information on grant application.

39-5913. Administrative appeals.

§ 39-5901. Short title. — This act shall be known and cited as the “Idaho Rural Health Care Access Program.”

History.

I.C., § 39-5901, as added by 2000, ch. 262, § 2, p. 734.

STATUTORY NOTES

Prior Laws.

Former § 39-5901, which comprised **I.C., § 39-5901**, as added by 1991, ch. 240, § 1, p. 579, was repealed by S.L. 2000, ch. 262, § 1, effective July 1, 2000.

Compiler’s Notes.

The term “this act” refers to S.L. 2000, ch. 262, which is compiled as §§ 39-5901 to 39-5913.

§ 39-5902. Rural health care access and physician incentive funds. —

(1) There is hereby created in the state treasury a fund known as the “Rural Health Care Access Fund.” Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purpose of grants for improving access to primary care medical services in areas designated as primary care health professional shortage areas and medically underserved areas and their administration pursuant to this chapter.

(2) There is hereby created in the state treasury a fund known as the “Rural Physician Incentive Fund.” Money is payable into the fund as provided for in [section 33-3723, Idaho Code](#). The moneys in the rural physician incentive fund are hereby appropriated for the uses of the fund. The state department of health and welfare may use the moneys in the fund to pay:

(a) The educational debts of rural physicians who practice primary care medicine in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) The expenses of administering the rural physician incentive program. The expenses of administering the program shall not exceed ten percent (10%) of the annual fees assessed pursuant to [section 33-3723, Idaho Code](#).

History.

[I.C., § 39-5902](#), as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 4, p. 132.

STATUTORY NOTES

Prior Laws.

Former § 39-5902, which comprised [I.C., § 39-5902](#), as added by 1991, ch. 240, § 1, p. 579; am. 1993, ch. 141, § 1, p. 373, was repealed by S.L. 2000, ch. 262, § 2, effective July 1, 2000.

Amendments.

The 2012 amendment, by ch. 44, substituted “access and physician incentive funds” for “access fund” in the section heading and added subsection (2).

Compiler’s Notes.

The provisions in subsection (2) were derived from former §§ 33-3724 and 33-3725, which were repealed by S.L. 2012, ch. 44, §§ 2 and 3, effective July 1, 2012.

§ 39-5903. Definitions. — As used in this chapter:

(1) “Applicant” means an entity submitting documents required by the department for the purpose of requesting a grant from the rural health care access and physician incentive program.

(2) “Application period” means the time period from July 1 to August 30 of the state fiscal year for which funding is requested.

(3) “Approval” means written notification that the application will be awarded funding through the rural health care access and physician incentive program.

(4) “Board” means the joint health care access and physician incentive grant review board.

(5) “Community sponsoring organization” means a hospital, medical clinic or other medical organization that is located in an eligible area and employs physicians for purposes of providing primary care medical services to patients.

(6) “Department” means the department of health and welfare.

(7) “Director” means the director of the department of health and welfare.

(8) “Eligible area for physician incentive grants” means a medically underserved area of Idaho, further defined to mean an area designated by the United States secretary of health and human services as a health professional shortage area.

(9) “Grant period” means the time immediately following the application period from July 1 through June 30 (state fiscal year) for which funding is granted.

(10) “Nurse practitioner” means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.

(11) “Oral health care provider” means a dentist or dental hygienist licensed pursuant to chapter 9, title 54, Idaho Code.

(12) “Physician assistant” means a health care provider licensed pursuant to chapter 18, title 54, Idaho Code.

(13) “Primary care,” for purposes of rural health care access grants, means the provision of professional comprehensive health services, including oral health care services, that includes health education and disease prevention, initial assessment of health problems, treatment of acute care and chronic health problems, and the overall management of an individual’s or family’s health care services as provided by an Idaho licensed internist, obstetrician, gynecologist, pediatrician, family practitioner, general practitioner, dentist, dental hygienist, nurse practitioner or physician assistant. It provides the initial contact for health services and referral for secondary and tertiary care.

(14) “Primary care health professional shortage area” means a geographic area or population group which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(15) “Primary care medicine,” for purposes of rural physician incentive grants, means family medicine, general internal medicine and general pediatrics. Provided however, if there is a demonstrated high level of need in an eligible area as determined by the board, it may also include obstetrics and gynecology, general psychiatry, general surgery and emergency medicine.

(16) “Medically underserved area” means a geographic area which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(17) “Qualified medical education debt” means a debt with a financial aid program or financial institution incurred to meet the educational costs of attending a medical school.

(18) “Rural health care access grant” means a grant awarded pursuant to this chapter.

(19) “Rural health care access and physician incentive program” means the program that administers the rural health care access and physician incentive funds.

(20) “Rural physician,” for purposes of physician incentive grants, means a licensed Idaho physician, whether a medical doctor or doctor of osteopathic medicine, who spends a minimum of twenty-eight (28) hours per week, on average, providing primary care medicine services to patients in an eligible area.

(21) “Rural physician incentive fee” means the fee assessed by the state to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for professional education in those fields, as those fields are defined by the compact.

(22) “Rural physician incentive fund” means the special revenue account in the state treasury created pursuant to [section 39-5902, Idaho Code](#), relating to the rural health care access and physician incentive grant program.

History.

[I.C., § 39-5903](#), as added by 2000, ch. 262, § 2, p. 734; am. 2002, ch. 354, § 1, p. 1010; am. 2007, ch. 199, § 2, p. 605; am. 2009, ch. 119, § 1, p. 382; am. 2012, ch. 44, § 5, p. 132.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 199, deleted “rural” preceding “health care” in subsection (4).

The 2009 amendment, by ch. 119, substituted “July 1 to August 30 of the state fiscal year” for “January 15 to April 15 prior to the state fiscal year” in subsection (2).

The 2012 amendment, by ch. 44, added subsections (5), (8), (15), (17), and (20) to (22), redesignating the existing subsections, as necessary; in subsection (1), substituted “department” for “rural health care access program” and “access and physician incentive program” for “access fund”; substituted “access and physician incentive program” for “access fund” in subsection (3); in subsection (4), inserted “joint” and substituted “access and physician incentive grant” for “access program”; in subsection (13),

inserted “for purposes or rural health care access grants” near the beginning; and, in subsection (19), twice inserted “and physician incentive” and substituted “funds” for “fund” at the end.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-5904. Joint health care access and physician incentive grant review board. — (1) The director shall appoint the members of a board to be known as the joint health care access and physician incentive grant review board, who shall serve at the pleasure of the director. Board members shall not be compensated, but shall be reimbursed for travel expenses incurred for attendance at board meetings.

(2) The board shall meet at least annually, for the purposes described in this chapter.

(3) The board shall be composed of the following: a representative from the Idaho academy of family physicians, a representative from the nurse practitioner conference group, a rural hospital administrator, a representative from the physician assistant association, a representative from the office of rural health, division of public health, a faculty member from one (1) of the Idaho family medicine residency programs, an Idaho medical association representative, an Idaho hospital association representative, an Idaho primary care association representative, an Idaho area health education center representative, a medical student program administrator representative from each state supported program, and an Idaho association of counties representative.

(4) Appointments to the board shall be for three (3) years. Board members may be reappointed at the end of each three (3) year period. Initial appointments shall be staggered in such a manner that approximately one-third (1/3) are appointed for one (1) year, one-third (1/3) are appointed for two (2) years, and one-third (1/3) are appointed for three (3) years.

(5) A majority of the board members constitutes a quorum for the transaction of business. A majority vote is required by the quorum in finalizing decisions.

History.

I.C., § 39-5904, as added by 2000, ch. 262, § 2, p. 734; am. 2007, ch. 199, § 3, p. 605; am. 2012, ch. 44, § 6, p. 132.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 199, in the section catchline and in subsection (1), deleted “rural” preceding “health care”; and in subsection (3), added “and an Idaho association of counties representative.”

The 2012 amendment, by ch. 44, substituted “joint health care access and physician incentive” for “health care access” in the section heading and subsection (1); and, in subsection (3), substituted “a representative from the office of rural health, division of public health” for “the health resource supervisor from the division of health”, and inserted “an Idaho area health education center representative, a medical student program administrator representative from each state supported program” near the end.

Compiler’s Notes.

Websites for organizations referenced in subsection (3):

Idaho academy of family physicians —
<http://idahofamilyphysicians.org>

nurse practitioner conference group — *<http://www.npidaho.org>*

physician assistant association — *<http://idahopa.org>*

division of health —
<http://healthandwelfare.idaho.gov/Health/tabid/60/Default.aspx>

Idaho medical association — *<http://www.idmed.org/>*

Idaho hospital association — *<http://www.teamiha.org>*

Idaho primary care association — *<http://idahopca.org>*

Idaho association of counties — *<http://www.idcounties.org>*

§ 39-5905. Scope of rural health care access and physician incentive grant support. — The board may award grants, in accordance with the procedures and criteria in this chapter, to governmental and nonprofit entities and to physicians for qualified medical education debt repayments for the purpose of improving access to primary health care services to rural and underserved areas and for physician loan repayment.

(1) Rural health care access grant awards:

(a) Individual grant awards will be limited to a total of thirty-five thousand dollars (\$35,000), direct and indirect costs, per year.

(b) Applicants may propose projects for funding for up to three (3) years.

(i) Continued funding for projects beyond the first grant year, years two (2) and three (3), shall be subject to the appropriation of funds and grantee performance.

(ii) No project may be funded for more than a total of three (3) years.

(iii) Any unused grant funds shall be returned to the rural health care access fund by the applicant no later than June 1 of the grant period.

(c) No funds awarded under a grant may be used for purchase, construction, renovation or improvement of real property or for projects which are solely or predominantly designed for the purchase of equipment. Use of funds for the purchase of equipment may be allowed when such equipment is an essential component of a program. However, the purchase of equipment may not represent more than forty percent (40%) of the total annual share of a proposal. Indirect costs shall not exceed fifteen percent (15%) of the total project.

(2) Physician incentive grant awards:

(a) A physician selected to receive a rural physician incentive grant award shall be entitled to receive qualified medical education debt repayments for a period not to exceed four (4) years in such amount as is determined annually.

- (b) Award amounts shall be established annually based on recommendations of the joint health care access and physician incentive grant review board utilizing such factors as availability of funding, the number of new applicants and the hours an award recipient will devote to providing primary care medicine in an eligible area.
- (c) The award shall not exceed the qualified medical education debt incurred by the recipient, and the maximum amount of educational debt repayments that a rural physician may receive shall be one hundred thousand dollars (\$100,000) over such four (4) year period.
- (d) All physician incentive grant awards shall be paid directly from the physician incentive fund to the physician receiving the award.
- (e) In determining the awards to be made in any given year, the board shall consider the value of retaining an appropriate balance in the fund for use in future years.
- (f) An award payment to a recipient in a single year is not guaranteed or assured in subsequent years and may be increased or reduced.
- (g) Any unused grant funds shall be returned to the physician incentive fund by the applicant no later than June 1 of the grant period.

History.

I.C., § 39-5905, as added by 2000, ch. 262, § 2, p. 734; am. 2009, ch. 119, § 2, p. 382; am. 2012, ch. 44, § 7, p. 132; am. 2015, ch. 159, § 1, p. 554.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 119, substituted “August 30” for “June 10” in subsection (2)(c).

The 2012 amendment, by ch. 44, inserted “rural health care access and physician incentive” in the section heading; in the introductory paragraph, inserted “and to physicians for qualified medical education debt repayments” and “and for physician loan repayment”; inserted the introductory paragraph in subsection (1) and redesignated the subordinate

parts thereof; substituted “June 1” for “August 30” in paragraph (1)(b)(iii); and added subsection (2).

The 2015 amendment, by ch. 159, in subsection (2), substituted “one hundred thousand dollars (\$100,000)” for “fifty thousand dollars (\$50,000” in paragraph (c) and rewrote paragraph (e), which formerly read: “The total of all awards from the rural physician incentive fund contractually committed in a year shall not exceed the annual amount deposited in the fund that same year”.

§ 39-5906. Categories of rural health care access and physician incentive grants. — (1) There are three (3) categories of rural health care access grant assistance:

(a) Telehealth projects — Grant funds may be used for projects that involve the use of telecommunications technologies for distance learning and for projects to improve access to care for rural communities.

(b) Community development projects — Grant funds may be used for health needs assessments, marketplace analysis, financial analysis and strategic planning activities.

(c) Other — Communities may choose to apply for funds for activities that they have identified and determined will help to improve access to primary care in rural areas, including loan repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers.

(2) Physician incentive grants: Grants are limited to loan repayment for physicians providing primary care medicine in eligible areas.

History.

I.C., § 39-5906, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 8, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, inserted “rural health care access and physician incentive” in the section heading; rewrote the former introductory language which read: “There are four (4) categories of grant assistance” and designated that paragraph as subsection (1); deleted former subsection (1), which read: “Recruitment and retention of primary care providers — Grant funds may be used for loan repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers”; redesignated former subsections (2) through (4) as paragraphs (a) through (c); inserted “including load repayment for primary

care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers” at the end of paragraph (c); and added subsection (2).

§ 39-5907. Eligibility for grants. — Applicants must meet the following requirements:

(1) Rural health care access grant awards:

(a) The geographical area to be benefitted must be located in a current primary care or dental health professional shortage area or a medically underserved area.

(b) The applicant must be a governmental entity or a nonprofit entity registered with the Idaho secretary of state.

(2) Rural physician incentive grant awards:

(a) A physician who meets the following requirements is eligible to apply for a rural physician incentive grant award:

(i) During the period covered by the award, the physician must be a rural physician providing primary care medicine in an eligible area. A physician may provide patient care services in primary care medicine in more than one (1) eligible area;

(ii) The physician must be a doctor of medicine or doctor of osteopathic medicine and have completed an accreditation council of graduate medical education or American osteopathic association residency;

(iii) The physician must be Idaho medical board certified/board eligible, be eligible for an unrestricted Idaho medical license and be able to meet the medical staffing requirements of the sponsoring organization when applicable; and

(iv) The physician must accept medicare and medicaid patients within the capacity of his or her primary care medicine practice.

(b) Physicians who have paid the fee authorized in [section 33-3723, Idaho Code](#), shall be given a preference over other applicants.

(c) A physician shall not be entitled to receive an award under this program if the physician is receiving payments for purposes of repaying

qualified medical education debt from another state or from a federal debt repayment program.

History.

I.C., § 39-5907, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 9, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, added the introductory paragraph in subsection (1) and redesignated the subordinate parts thereof; and added subsection (2).

§ 39-5908. Rural health care access and physician incentive applications required. — (1) A completed grant application must be submitted by the applicant for the purpose of requesting a grant or contract, on or before the conclusion of the application period specified for the appropriate grant cycle. All applications must include the required information.

(2) The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. Additionally, the board may request and/or use other information known to it in making its decision.

(3) All rural health care access applications shall include: (a) Geographical area of need;

(b) Individual or entity requesting funds;

(c) Narrative description of the methods to be used to address needs and demonstrate the potential of the project to improve access to health care services in the community; (d) Identification of measurable goals, objectives to be used to reach the goals, and the resources necessary to complete each activity; (e) Estimation of how long it will take to accomplish the individual activities of the project; (f) Demonstrated community and organizational support for the project; (g) County or local governmental endorsement; (h) Operating budget including:

(i) Proportion of operating budget, if any, the applicant proposes to match with the rural health care access grant funds; (ii) Documentation of one (1) or more vendor price quotes for all proposed equipment purchases; (iii) Contact person for verification of fiscal information; (i) Federal tax identification number; and

(j) Other information required by the board.

(4) All rural physician incentive applications shall: (a) Be on a form prescribed by the rural health care access and physician incentive board; and (b) Include a letter of support along with supporting documentation.

History.

I.C., § 39-5908, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 10, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, rewrote the section heading, which formerly read: “Application required”; in subsection (1), deleted “rural health care access” following “A complete” and inserted “or contract” in the first sentence and added the second sentence; added subsection (2) and redesignated former subsections (2) and (3) as present subsections (3) and (4); substituted “All rural health care access applications” for “Each application” in the introductory paragraph in subsection (3); and rewrote subsection (4), which formerly read: “All applications must include the required information”; and deleted former subsection (4), which read: “The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. Additionally, the board may request and/or use other information known to them in making their decision.”

§ 39-5909. Rural health care access and physician incentive grant award schedule. — The board shall conduct the grant process in accordance with the following schedule:

(1) The rural health care access and physician incentive program manager will generate, and make available, a list of areas eligible for potential grant assistance no later than May 1 prior to the application period.

(2) The rural health care access and physician incentive program manager shall develop an application form and make guidance available no later than July 1 which shall initiate the application period prior to the grant period.

(3) The completed application shall be submitted no later than August 30 of the application period.

(4) The board shall issue notification to every applicant regarding the disposition of their grant request by October 30 prior to the grant period.

(5) Funds for approved rural health care access grants shall be disbursed during November of that grant period or over the course of the current grant year as funds become available.

(6) Funds for approved rural physician incentive grants shall be disbursed upon completion of six (6) months of service in an eligible area during the initial grant period and annually thereafter upon completion of a twelve (12) month term of service in an eligible area.

History.

I.C., § 39-5909, as added by 2000, ch. 262, § 2, p. 734; am. 2002, ch. 354, § 2, p. 354; am. 2009, ch. 119, § 3, p. 382; am. 2012, ch. 44, § 11, p. 132.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 119, in subsection (1), substituted “May 1” for “November 15”; in subsection (2), substituted “July 1” for “January 15”; in subsection (3), substituted “August 30” for “April 15”; in subsection (4), substituted “October 30” for “June 15”; and, in subsection (5), substituted “November” for “July.”

The 2012 amendment, by ch. 44, added “Rural health care access and physician incentive” to the beginning of the section heading; substituted “and physician incentive program manager” for “director” in subsections (1) and (2); inserted “rural health care access” in subsection (5); and added subsection (6).

§ 39-5910. Rural health care access and physician incentive award criteria. — (1) Rural health care access awards shall be made by the board based on the following weighted criteria:

(a) Background of bidding organization. The applicant must show adequate experience, knowledge, and qualifications to adequately perform the scope of work: weight = 10%;

(b) Community and organizational support. The applicant must demonstrate community and organizational support for the project: weight = 15%;

(c) Specificity and clarity of scope of project. The proposal will be evaluated based on the extent to which the goals and objectives are specific, measurable, and relevant to the purpose of the proposal and the activities planned to accomplish those objectives are germane and can be sustained beyond the grant time frame. Additionally, there must be a demonstrated need for and lack of availability of funds from other sources to address the primary health care needs of the defined area of service: weight = 35%;

(d) Monitoring and evaluation. The proposal will be evaluated based on the extent to which the monitoring and evaluation system will document program or activity progress and measure effectiveness: weight = 15%;

(e) Budget. The proposal will be evaluated based on the extent to which a detailed itemized budget and justification are consistent with stated objectives and planned program activities: weight = 25%.

(2) Physician incentive awards shall be made by the board based on ranking and priority of applicants in accordance with the following criteria:

(a)(i) Priority selection for physicians who were Idaho resident students and were assessed the rural physician incentive fee and paid into the fund, followed by physicians who were Idaho residents prior to completing medical school out of state and who did not contribute to the fund, followed by physicians from other states who were not Idaho residents;

- (ii) Demonstrated physician shortage in the eligible area to be benefitted;
 - (iii) Demonstrated physician recruiting difficulties in the eligible area to be benefitted;
 - (iv) Support of the medical community and community leaders in the eligible area.
- (b) In reviewing and weighing criteria, all relevant factors shall be considered.
- (c) If a physician selected for an award of debt payments does not accept the award in the manner provided pursuant to the provisions of this chapter, then the award shall be awarded to the next eligible applicant who has not received an award.
- (d) The physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

History.

I.C., § 39-5910, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 12, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, added “Rural health care access and physician incentive” to the beginning of the section heading; added the subsection (1) designation to the introductory paragraph and redesignated the subordinate parts thereof; substituted “Rural health care access awards shall be made by the board” for “The board shall awards grants” at the beginning of subsection (1); and added subsection (2).

Idaho Code § 39-5911

§ 39-5911. Negotiation. [Repealed.]

Repealed by S.L. 2012, ch. 44, § 13, effective July 1, 2012.

History.

I.C., § 39-5911, as added by 2000, ch. 262, § 2, p. 734.

§ 39-5912. Fraudulent information on grant application. — Providing false information on any application or document submitted under this statute is a misdemeanor and grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the rural health care access and physician incentive grant program. This section shall not limit other remedies which may be available for the filing of false or fraudulent applications.

History.

I.C., § 39-5912, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 14, p. 132.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2012 amendment, by ch. 44, substituted “access and physician incentive grant program” for “access fund” at the end of the second sentence.

§ 39-5913. Administrative appeals. — Applicants aggrieved by the award or failure to award a grant pursuant to this chapter shall be afforded the remedies provided in chapter 52, title 67, Idaho Code.

History.

I.C., § 39-5913, as added by 2000, ch. 262, § 2, p. 734.

Chapter 60

CHILDREN'S TRUST FUND

Sec.

39-6001. Children's trust fund board — Creation.

39-6002. Children's trust fund board — Powers and duties.

39-6003. Criteria for programs.

39-6004. Consideration in award of contracts.

39-6005. Matching funds.

39-6006. Reports. [Repealed.]

39-6007. Children's trust fund — Creation.

39-6008. Duties of department of health and welfare.

§ 39-6001. Children's trust fund board — Creation. — (1) There is hereby created within the department of health and welfare a children's trust fund and a children's trust fund board to administer the children's trust fund.

(2) The children's trust fund board shall consist of a chairperson and nine (9) other members as follows:

(a) The chairperson and six (6) other members of the board shall be appointed by the governor and shall be selected for their interest and expertise in the prevention of child abuse. There shall be one (1) board member appointed from each of the seven (7) judicial districts of the state as enumerated in chapter 8, title 1, Idaho Code. Members shall be appointed to serve for three (3) year terms. Vacancies shall be filled for any unexpired term by appointment in the same manner as the original appointments were made.

(b) The superintendent of public instruction, the attorney general, and the director of the department of health and welfare or their designees shall be members and shall serve as voting members of the children's trust fund board.

(3) A quorum of the children's trust fund board shall consist of a majority of its members which quorum must be present in order to conduct any business.

(4) The chairperson of the children's trust fund board shall have no vote except in the event of a tie vote of a quorum of the members of the board.

(5) Board members shall be compensated as provided in [section 59-509\(b\), Idaho Code](#).

(6) Members of the children's trust fund board shall serve until a successor has been appointed but may be removed by the appointing official for misconduct or failure to carry out the duties provided in this chapter.

History.

[I.C., § 39-6001](#), as added by 1985, ch. 31, § 2, p. 59; am. 2002, ch. 292, § 2, p. 841; am. 2014, ch. 52, § 1, p. 129.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1001 et seq.

Director of department of health and welfare, § 56-1002 et seq.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2014 amendment, by ch. 52, deleted “except that the chairperson and three (3) other members shall initially serve for four (4) years” at the end of the third sentence in paragraph (2)(a); and, in subsection (6), inserted “shall serve until a successor has been appointed but” and substituted “appointing official” for “governor”.

Legislative Intent.

Section 1 of S.L. 1985, ch. 31 read: “The legislature hereby declares that the children of the state of Idaho are its single greatest resource and that these children require the utmost protection to guard their future and the future of the state. The legislature recognizes that child abuse and neglect is a threat to the family unit and imposes major expenses on society. The legislature further declares that there is a need to assist private and public agencies in identifying and establishing community-based educational and service programs for the prevention of child abuse and neglect. It is the intent of the legislature that an increase in prevention programs will help break the cycle of child abuse and will help reduce the breakdown in families and thus reduce the need for state intervention and state expenses. It is further the intent of the legislature that prevention of child abuse and child neglect programs are partnerships between communities, citizens, and the state.”

OPINIONS OF ATTORNEY GENERAL

An appointment of a member of the judiciary to the children’s trust account [fund] board would violate the separation of powers clause, Idaho [Const., Art. II, § 1](#). OAG 85-5.

§ 39-6002. Children's trust fund board — Powers and duties. — To carry out the purposes of this chapter, the children's trust fund board may:

(1) Independently, in collaborative relationships or partnerships, contract with public or private nonprofit organizations, agencies, schools or with qualified individuals, establish community-based educational and service programs and initiatives designed to reduce or prevent the occurrence of child abuse and neglect.

(a) Each contract entered into by the board shall contain a provision for the evaluation of services provided under the contract. Contracts for services to prevent child abuse and child neglect may be awarded to new programs, existing programs, initiatives, and to demonstration projects.

(b) Continuation of contracts shall be based upon goal attainment.

(2) Facilitate the exchange of information between groups concerned with families and children.

(3) Consult with state departments, agencies, commissions and boards to help determine the probable effectiveness, fiscal soundness, and need for proposed educational and service programs for the prevention of child abuse and neglect.

(4) Adopt rules pursuant to chapter 52, title 67, Idaho Code, to carry out the provisions of this chapter.

(5) Employ an executive director who shall be responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The board may also employ or contract with other individuals to provide professional, clerical or other services deemed necessary by the board to effectuate the provisions of this chapter and the rules of the board, and purchase or rent necessary office space, equipment and supplies. The compensation of the executive director and other personnel shall be determined by the board, and the executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(6) Solicit and accept grants, donations, gifts and other moneys as necessary to carry out the purposes of this chapter.

History.

I.C., § 39-6002, as added by 1985, ch. 31, § 2, p. 59; am. 1990, ch. 208, § 1, p. 464; am. 2002, ch. 292, § 3, p. 841; am. 2014, ch. 52, § 2, p. 129.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 52, rewrote subsection (1), which formerly read: “Contract with public or private nonprofit organizations, agencies, schools or with qualified individuals for the establishment of community-based educational and service programs designed to reduce the occurrence of child abuse and neglect. Each contract entered into by the board shall contain a provision for the evaluation of services provided under the contract. Contracts for services to prevent child abuse and child neglect may be awarded to existing programs and to demonstration projects. Continuation of contracts shall be based upon goal attainment”; in subsection (4), deleted “The children’s trust fund board may” from the beginning; rewrote subsection (5), which formerly read: “Employ and shall fix the compensation of a part-time administrator who shall be designated as the executive director of the board and who shall be exempt from the provisions of chapter 53, title 67, Idaho Code”; and added subsection (6).

§ 39-6003. Criteria for programs. — (1) Programs contracted for with moneys received pursuant to [section 63-3067A, Idaho Code](#), are intended to provide prevention services. “Prevention services” means any community-based educational or service program designed to prevent or alleviate child abuse or neglect. “Prevention services” shall not include direct treatment programs.

(2) Moneys appropriated by the legislature may also be used for salaries pursuant to subsection (5) of [section 39-6002, Idaho Code](#).

(3) The children’s trust fund board shall develop policies to determine whether programs will receive renewed funding. Nothing in this chapter shall be construed to require continued funding by the state of Idaho or the children’s trust fund board.

(4) The children’s trust fund board shall prepare a report on its activities and the effectiveness of those activities in fostering the prevention of child abuse and neglect annually, and deliver that report to the governor and legislature on January 15 of each year.

History.

[I.C., § 39-6003](#), as added by 1985, ch. 31, § 2, p. 59; am. 1990, ch. 208, § 2, p. 464; am. 2002, ch. 292, § 4, p. 841; am. 2014, ch. 52, § 3, p. 129.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 52, substituted “may also be used for salaries” for “also may be used for a part-time administrator” in subsection (2).

§ 39-6004. Consideration in award of contracts. — In awarding contracts pursuant to [section 39-6002, Idaho Code](#), consideration shall be given to factors such as need, coordination with or enhancement of existing services, and evidence of community support or volunteers for the program.

History.

[I.C., § 39-6004](#), as added by 1985, ch. 31, § 2, p. 59; am. 2018, ch. 169, § 10, p. 344.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 169, substituted “39-6002” for “39-5502” near the beginning of the section.

§ 39-6005. Matching funds. — The children's trust fund board, in its discretion, may require a certain percentage of the funding for programs approved by the board be provided by the entity sponsoring or proposing the program. Contributions such as materials, personnel, supplies, physical facilities or services may be considered as all or part of the funding provided by the petitioning entity.

History.

I.C., § 39-6005, as added by 1985, ch. 31, § 2, p. 59; am. 2002, ch. 292, § 5, p. 841.

§ 39-6006. Reports. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6006**, as added by 1985, ch. 31, § 2, p. 59, was repealed by S.L. 2002, ch. 292, § 6.

§ 39-6007. Children's trust fund — Creation. — (1) There is hereby created in the state treasury the children's trust fund.

(2) The fund shall consist of: (a) Moneys appropriated to the fund; (b) Moneys as provided in [section 63-3067A, Idaho Code](#); (c) Donations, gifts, grants and other moneys from any source; and (d) Any other moneys which may hereafter be provided by law.

(3) Moneys in the fund may be expended for purposes provided in this chapter, provided that the children's trust fund advisory board is authorized to expend up to fifty percent (50%) of the moneys generated annually pursuant to [section 63-3067A, Idaho Code](#). Interest earned on the investment of idle money in the children's trust fund shall be returned to the children's trust fund.

(4) Disbursements of moneys from the fund shall be on the authorization of the children's trust fund board or a duly authorized representative of the board.

(5) After the balance in the children's trust fund has reached two million five hundred thousand dollars (\$2,500,000), no further collections shall be received by the state tax commission, and all references to the fund shall be deleted from income tax forms.

History.

[I.C., § 39-6007](#), as added by 1985, ch. 31, § 2, p. 59; am. 1987, ch. 337, § 4, p. 709; am. 2002, ch. 292, § 7, p. 841; am. 2005, ch. 342, § 1, p. 1069; am. 2014, ch. 52, § 4, p. 129.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101 et seq.

Amendments.

The 2014 amendment, by ch. 52, in subsection (1)(c), inserted “and other moneys”; and inserted “state” in subsection (5).

§ 39-6008. Duties of department of health and welfare. — The department of health and welfare under the direction of the children's trust fund board shall be responsible for the management and accounting of moneys expended from the children's trust fund.

History.

I.C., § 39-6008, as added by 1985, ch. 31, § 2, p. 59; am. 2002, ch. 292, § 8, p. 841.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Chapter 61

IDAHO CONRAD J-1 VISA WAIVER AND NATIONAL INTEREST WAIVER PROGRAMS

Sec.

39-6101. Short title.

39-6102. Purpose.

39-6103. Severability.

39-6104. Incorporation by reference.

39-6105. Definitions.

39-6106. General requirements and limitations.

39-6107. Applied principles.

39-6108. Criteria for applicants.

39-6109. Contract requirements for J-1 visa waivers.

39-6109A. Contract requirements for national interest waivers.

39-6110. Criteria for proposed practice location.

39-6111. Criteria for the J-1 petitioning physician.

39-6111A. Flex waivers for J-1 petitioning physicians.

39-6111B. Criteria for the national interest waiver petitioning physician.

39-6112. Joint reporting requirement upon commencement of practice.

39-6113. Application fee.

39-6114. Required application forms and accompanying documents for a J-1 visa waiver request.

39-6114A. Required application forms and documents for a national interest waiver request.

39-6115. Criteria applied to federally designated facilities.

39-6116. Department review and action.

39-6117. Eligibility for future participation.

39-6118. Department responsibility to report.

§ 39-6101. Short title. — This chapter shall be known and may be cited as the “Idaho Conrad J-1 Visa Waiver Program and National Interest Waiver Program.”

History.

I.C., § 39-6101, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 2, p. 325.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, added “and National Interest Waiver Program.”

§ 39-6102. Purpose. — Under this chapter, rural and underserved communities in Idaho would be able to apply for the placement of a foreign trained physician after demonstrating that they are unable to recruit an American physician, and all other recruitment/placement possibilities have proven to be inaccessible.

(1) The “Idaho Conrad J-1 Visa Waiver Program” authorizes the Idaho department of health and welfare to recommend up to thirty (30) foreign trained physicians per federal fiscal year to locate in communities that are federally designated as having a health workforce shortage. No more than ten (10) of thirty (30) recommendations may be for physician specialists other than pediatrics, internal medicine, family medicine, obstetrics, gynecology, psychiatry or general surgery. Applications for specialists must demonstrate a need for the type of specialty held by the petitioning physician. Final approval of J-1 visa waiver requests are made by the United States bureau of citizenship and immigration services.

(2) Provided health care organizations located in federally designated shortage areas do not utilize the full annual allocation of J-1 visa waivers, the department will accept no more than ten (10) waiver applications six (6) months after the beginning of each federal fiscal year for petitioning J-1 visa waiver physicians to work in areas without a federal shortage area designation. The practice and petitioning physician must serve patients who reside in federally designated areas of underservice. The maximum number of flex waiver applications available to specialists is limited to no more than five (5) per federal fiscal year.

(3) The “National Interest Waiver Program” allows the Idaho department of health and welfare to testify that it is in the public’s interest that a waiver be granted to a foreign trained physician who commits to locating in a community that is federally determined as having a health workforce shortage. Final approval of the national interest waiver request is made by the United States bureau of citizenship and immigration services.

History.

I.C., § 39-6102, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 3, p. 325; am. 2017, ch. 72, § 1, p. 171.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2009 amendment, by ch. 106, moved the former first two sentences and designated them as subsection (1) and added subsection (2).

The 2017 amendment, by ch. 72, inserted the second and third sentences in subsection (1); and added subsection (2), redesignating former subsection (2) as subsection (3).

Federal References.

The United States bureau of citizenship and immigration services is established at **6 USCS § 271**.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6103. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 39-6103, as added by 2004, ch. 128, § 1, p. 437.

§ 39-6104. Incorporation by reference. — P.L. 103-416, amended by P.L. 107-273, November 2, 2002, 8 U.S.C. 1184(*l*) and 22 CFR sec. 514.44(e) [22 CFR § 41.63(e)], F.R. volume 60, No. 197, 8 CFR sec. 214.12, 8 CFR sec. 245 and 18 U.S.C. 1001 are incorporated by reference.

History.

I.C., § 39-6104, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 4, p. 325.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, inserted “**8 CFR sec. 214.12, 8 CFR sec. 245.**”

Federal References.

Public Law 103-416, the immigration and nationality technical corrections act of 1994, is codified throughout chapter 12, title 8, United States Code Service.

Compiler’s Notes.

The bracketed insertion was added by the compiler to reflect the renumbering of the referenced Code of Federal Regulations provision in 1999.

§ 39-6105. Definitions. — As used in this chapter:

(1) “Applicant” means a health care facility that seeks to employ a physician and is requesting state support of a J-1 visa waiver or national interest waiver.

(2) “Area of underservice” means a health professional shortage area in primary care or mental health, a medically underserved area, or a medically underserved population, federally designated by the secretary of health and human services.

(3) “Department” means the Idaho department of health and welfare.

(4) “Employment contract” means a legally binding agreement between the applicant and the physician named in the J-1 visa waiver or national interest waiver application which contains all terms and conditions of employment, including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement. The employment contract must meet all state and federal criteria, including labor and immigration rules.

(5) “Federal fiscal year” means the twelve (12) months which commence the first day of October in each year and close on the thirtieth day of September of the following year.

(6) “Flex” means the maximum of ten (10) waiver applications, with no more than five (5) available to specialists, that may be submitted six (6) months following the beginning of each federal fiscal year for J-1 visa waiver physicians to work in areas without a federal shortage area designation.

(7) “Full time” means a working week of a minimum of forty (40) hours at one (1) or more health care facilities.

(8) “Health care facility” means an entity with an active Idaho taxpayer identification number doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of primary medical or mental health care.

(9) “Interested government agency” means an agency that has the authority from the United States department of state to submit requests for J-1 visa waivers of foreign physician petitioners on behalf of public interest.

(10) “J-1 visa” means an entrance permit into the United States for a foreign trained physician who is a nonimmigrant admitted under section 101(a)(15)(J) of the United States information and education exchange act or who acquired such status or who acquired exchange visitor status under the act.

(11) “J-1 visa waiver” means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his home country for a two (2) year period following medical residency training.

(12) “National interest waiver” means an exemption from the labor certification process administered by the United States department of labor for foreign physicians whose will to stay in the United States and work in an area of underservice in Idaho is determined to be in the public interest by the Idaho department of health and welfare.

(13) “New start” means a health care facility as defined in subsection (8) of this section, that has been in existence for twelve (12) months or less.

(14) “Petitioning physician” means the foreign physician, named in the J-1 visa waiver or national interest waiver application, who requires a waiver to remain in the United States to practice medicine.

(15) “Primary care” means a medical doctor or doctor of osteopathy licensed in pediatrics, family medicine, internal medicine, obstetrics, gynecology, general surgery or psychiatry.

(16) “Sliding fee discount schedule” means a written delineation documenting the value of charge discounts granted to patients based upon financial hardship and federal poverty guidelines.

(17) “Specialist” means a medical doctor or doctor of osteopathy in any specialty or subspecialty other than pediatrics, family medicine, internal medicine, obstetrics, gynecology, general surgery or psychiatry.

(18) “Unmet need” means a vacancy or shortage of primary care or specialist physicians experienced by a community or population, as defined

by federally designated health professional shortage areas or medically underserved areas/populations or as demonstrated by additional data and information required by the department.

(19) “Vacancy” means a full-time physician practice opportunity in the delivery of health care services.

History.

I.C., § 39-6105, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 5, p. 325; am. 2014, ch. 61, § 1, p. 144; am. 2017, ch. 72, § 2, p. 171.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2009 amendment, by ch. 106, in subsections (1), (5), and (14), inserted “J-1” and “or national interest waiver” preceding and following “visa waiver”; added the last sentence in subsection (2); in subsection (7), substituted “at one (1) or more health care facilities” for “at a health care facility”; added subsections (11) and (12), and redesignated the subsequent subsections accordingly; and deleted former subsection (17), which was the definition for “visa waiver.”

The 2014 amendment, by ch. 61, inserted “general surgery” near the end of subsection (15).

The 2017 amendment, by ch. 72, deleted the former last sentence in subsection (2), which read: “Physician scarcity areas as determined by the centers for medicaid and medicare services are included for the purpose of placing national interest waiver petitioning physicians”; deleted former subsection (4), which read: “De-designation threshold’ means the number of full-time equivalent primary care physicians necessary to remove the federal designation as an area of underservice”; redesignated former subsections (5) and (6) as present subsections (4) and (5); added present subsection (6); inserted “Petitioning” at the beginning of subsection (14); added subsection (17), redesignating former subsections (17) and (18) as present subsections (18) and (19); in subsection (18), substituted “primary

care or specialist physicians” for “primary care health physicians” near the beginning and added “or as demonstrated by additional data and information required by the department” at the end; and substituted “health care services” for “primary care services” at the end of subsection (19).

Federal References.

The reference in subsection (10) to the United States information and education exchange act should be to the immigration and nationality act. See [8 USCS § 1101\(a\)\(15\)\(J\)](#).

Compiler’s Notes.

For additional information on the J-1 visa program, referred to in this section, see <https://jlvisa.state.gov>.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6106. General requirements and limitations. — (1) J-1 visa waiver or national interest waiver request. The department may only submit a waiver request when:

- (a) The application contains all of the required information and documentation; and
- (b) The application meets all state and federal criteria; and
- (c) Foreign exchange physicians having a J-1 case number assigned by the United States department of state have paid all federal processing fees; and
- (d) The applicant has paid the state of Idaho application processing fee.

(2) Limitations of department actions.

(a) Prior to submission of an application, the department may provide information to the applicant on preparing a complete application.

(b) The department will not be responsible for adding any information to incomplete application packets.

(c) For applicants who have benefited from department waiver requests previously, the applicant's history of compliance will be a consideration in future decisions for waiver requests.

(d) In any single program year, a health care facility will not be allotted more than two (2) J-1 visa waiver request applications per practice location.

(e) The shortage area designation must be current on the date the United States department of state reviews and recommends the application and on the date the immigration agency approves the J-1 visa waiver and national interest waiver. Any application that is being submitted to the department at the end of the three (3) year health professional shortage area designation cycle may be summarily denied if the renewal is not obtained.

(i) Participation by the department in the J-1 visa waiver program and in the national interest waiver program is completely discretionary and

voluntary. The department may elect not to participate in the program at any time. The submission of a complete waiver application package does not ensure the department will recommend a waiver. The department reserves the right to recommend or decline any request for a waiver.

(ii) The department, its employees or agents are held harmless of any perceived consequence for the denial of a waiver petitioner, or the approved placement of one that is not favorable.

(iii) Application procedures for J-1 visa waiver physician placements were developed by the department in compliance with [P.L. 103-416](#) and subsequent revisions. The procedures for the issuance of national interest waiver recommendations were developed by the department in compliance with [8 CFR sec. 214.12](#) and [8 CFR sec. 245](#) and subsequent revisions. These procedures are subject to updates and changes at any time. Interpretation of these procedures rests solely with the department in consultation with the appropriate federal agencies.

History.

[I.C., § 39-6106](#), as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 6, p. 325; am. 2017, ch. 72, § 3, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in the introductory language in subsection (1), substituted “J-1 visa waiver or national interest waiver request” for “Visa waiver request” and deleted “visa” following “submit a”; in subsection (2)(d)(i), inserted “J-1 visa”; in subsection (2)(d)(ii), inserted “J-1”; in the first sentence in subsection (2)(e), inserted “and national interest waiver”; in subsection (2)(e)(i), in the first sentence, deleted “Idaho conrad” preceding “J-1 visa waiver” and inserted “and in the national interest waiver program” and, in the third sentence, inserted “application”; and, in subsection (2)(e)(iii), in the first sentence, deleted “Idaho conrad” preceding “J-1 visa waiver” and added the second sentence.

The 2017 amendment, by ch. 72, in subsection (2), rewrote paragraph (d), which formerly read: “In any single program year, a health care facility in any one (1) area of underservice: (i) Will not be allotted more than two (2) J-1 visa waiver request applications; and (ii) Will not exceed by more than one and nine-tenths (1.9) full-time equivalents, the number of J-1 physicians needed to eliminate the physician shortage as defined by the current de-designation threshold in any single program year”.

Federal References.

P.L. 103-416, referred to in paragraph (2)(e)(iii), is codified as 8 U.S.C.S. § 1401 et seq.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6107. Applied principles. — (1) Option of last resort. The J-1 visa waiver and national interest waiver programs are considered a final source for recruiting qualified physicians. These programs are not a substitute for broad recruiting efforts for graduates from United States medical schools, but an option of last resort. Any application that qualifies for consideration under any other interested government agency or federal program, such as the one administered by the department of health and human services, must be submitted under that program in lieu of the J-1 visa waiver program. The option of last resort principle does not apply to national interest waiver petitioning physicians for whom a J-1 visa waiver request was issued by the state of Idaho; in which case, physician retention is the objective if it is determined to be in the public interest.

(2) Waiver request applications will only be considered for health care facilities that can provide evidence of sustained active recruitment over a period of at least six (6) months for the physician vacancy in the practice location. The six (6) month vacancy requirement does not apply to a national interest waiver petitioning physician for whom a J-1 visa waiver request was issued by the state of Idaho.

(3) The J-1 visa waiver program and national interest waiver program will be used to assist health care facilities that can document the provision of health care services to all residents of the federally determined area of underservice. When a federal designation is for an underserved population, the health care facility must document the provision of care to, and assure access by, the underserved population.

History.

I.C., § 39-6107, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 7, p. 325; am. 2017, ch. 72, § 4, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in subsection (1), in the first sentence, inserted “J-1” and “and national interest waiver” and, in the fourth sentence,

deleted “Idaho conrad” preceding “J-1 visa waiver” and added the last sentence; in subsection (2), added the last sentence; and, in subsection (3), inserted “J-1” and “and national interest waiver program” and substituted “federally determined area of underservice” for “federally designated underserved area.”

The 2017 amendment, by ch. 72, substituted “physician vacancy” for “primary care vacancy” near the end of the first sentence in subsection (2) and substituted “health care services” for “primary health care services” in the first sentence in subsection (3).

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6108. Criteria for applicants. — (1) Applicants must be existing health care facilities that:

- (a) Have an active taxpayer identification number in Idaho; and
 - (b) Have provided medical or mental health care in Idaho for a minimum of twelve (12) months prior to submitting the application, or meet the requirements for a new start as defined in this chapter.
- (2) The waiver request to the department must come from a U.S. health care facility on behalf of the physician and not directly from the physician or his representative.
- (3) J-1 visa waiver and national interest waiver petitioners with fellowship training must contract with employers to provide primary care services full time.
- (4) Applicants must not be former J-1 visa waiver or national interest waiver physicians who are currently fulfilling their required three (3) or five (5) year obligation.
- (5) Applicants may not submit waiver requests for a relative.
- (6) Applicants must accept all patients regardless of their ability to pay.
- (7) Except for state institutional and correctional facilities designated as federal shortage areas, the applicant must:
- (a) Serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of a federal shortage designation.
 - (b) Agree to implement a sliding fee discount schedule. The schedule must be:
 - (i) Available in Spanish (where applicable) and English; and
 - (ii) Posted conspicuously; and
 - (iii) Distributed in hard copy on request to individuals making or keeping appointments with that physician.
- (8) Applicants must have a signed employment contract with the physician, and guarantee wages for the duration of the contract.

(9) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status and payer mix.

(10) Applicants must first apply through any organization with federal or interested governmental agency authority which submits waiver requests for Idaho's underserved rural areas. Documentation which fully explains why this route was not taken for placement is required as part of the application.

(11) The physician's name and practice location will be made available to the public as a provider who accepts medicare, medicaid and utilizes a sliding fee schedule for the low-income population.

(12) An assurance letter that the health care facility, its principals, and the J-1 or national interest waiver petitioning physician are not under investigation for, under probation for, or under restriction for medicare or medicaid fraud, or other violations of law or licensure restrictions that may indicate that it may not be in the public interest that a waiver be granted, must be provided.

(13) The applicant and its principals must be free of default on any federal or state scholarship or loan repayment program such as the national health service corps or by the state.

History.

I.C., § 39-6108, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 8, p. 325; am. 2017, ch. 72, § 5, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in subsection (3), inserted "and national interest waiver"; in subsections (4) and (12), inserted "or national interest waiver"; in subsection (4), inserted "or five (5)"; in subsection (8), substituted "for the duration of the contract" for "for the three (3) years of the contract"; and, in subsection (12), deleted "of the two (2) year home residency requirement" preceding "be granted."

The 2017 amendment, by ch. 72, substituted “a federal shortage designation” for “the federal designation” at the end of paragraph (7)(a); and deleted “of primary health” following “public as a provider” near the middle of subsection (11).

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6109. Contract requirements for J-1 visa waivers. — Throughout the period of obligation, regardless of the petitioning physician's visa status, the employment contract must:

- (1) Meet state and federal requirements;
- (2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the J-1 visa waiver physician's ability to remain in the area upon completion of the contract term is prohibited by regulation;
- (3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation for the area of underservice full time;
- (4) Include a notarized statement by the physician that he agrees to meet the requirements set forth in section 214(l) of the immigration and nationality act;
- (5) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;
- (6) Specify that benefits offered are not included as part of base salary;
- (7) Include leave (annual, sick, continuing medical education and holiday);
- (8) State that amendments shall adhere to state and federal J-1 visa waiver requirements;
- (9) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required three (3) years of medical service have expired;
- (10) Be assignable only by the employer to a successor with concurrence of the department;
- (11) Include the practice site address, the days and hours of practice, field of medicine, and a statement that on-call and travel times are not included

in the minimum hours;

(12) Include a statement that the employment will start within ninety (90) days after the waiver approval has been issued;

(13) Not commence until after the petitioning physician's J-1 waiver and appropriate work authorization are approved and the residency program has been successfully completed. The contract shall affirm that no transfer or other modification regarding the duration of contract dates will be approved unless extenuating circumstances are shown to exist, as determined by the department and approved by the United States attorney general in accordance with applicable federal rules and regulations;

(14) Not be subject to changes which result in termination of contract, change in practice scope, or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the proposed change. Moving or placement of a J-1 visa waiver physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program and will be reported as such to the immigration agency. It will also limit the applicant's future participation in the program;

(15) Be signed by both the J-1 visa waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

History.

I.C., § 39-6109, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 9, p. 325; am. 2017, ch. 72, § 6, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in the section catchline, added “for J-1 visa waivers”; and in subsection (9), inserted “of medical service.”

The 2017 amendment, by ch. 72, inserted “the petitioning” near the middle of the introductory paragraph; added subsection (12), redesignating the remaining subsections accordingly; in the first sentence in present subsection (13), inserted “petitioning” near the beginning; and inserted “J-1

visa waiver” near the beginning of the third sentence in present subsection (14).

Federal References.

Section 214(*l*) of the immigration and nationality act, referred to in subsection (4), is codified as **8 U.S.C.S. 1184(*l*)**.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6109A. Contract requirements for national interest waivers. — Throughout the period of obligation, regardless of physician's visa status, the employment contract must:

- (1) Meet state and federal requirements;
- (2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the national interest waiver physician's ability to remain in the area upon completion of the contract term is prohibited;
- (3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients and the population of the federal designation for the area of underservice full time;
- (4) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;
- (5) Specify that benefits offered are not included as part of the base salary;
- (6) Include annual, sick, continuing medical education and holiday leave;
- (7) State that amendments shall adhere to state and federal national interest waiver requirements;
- (8) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required five (5) years of medical service have expired;
- (9) Be assignable only by the employer to a successor with concurrence of the department;
- (10) Include the practice site address, the days and hours of practice and field of medicine;
- (11) Include a statement that the employment will start within ninety (90) days after the waiver approval has been issued;

(12) Not be subject to changes which result in termination of contract, change in practice scope or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the proposed change. Moving or placement of a physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program. It will also limit the applicant's future participation in the program; and

(13) Be signed by both the national interest waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

History.

I.C., § 39-6109A, as added by 2009, ch. 106, § 10, p. 325.

§ 39-6110. Criteria for proposed practice location. — (1) The proposed practice location must:

(a) Be located in an area of underservice federally designated by the secretary of health and human services; or

(b) Serve patients who reside in an area of underservice federally designated by the secretary of health and human services for flex waiver applications only.

(2) If a new practice location is planned, additional criteria apply. New practice locations must:

(a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;

(b) Support a full-time physician practice;

(c) Have written referral plans that describe how patients using the new practice care location will be connected to existing secondary and tertiary care if needed.

History.

I.C., § 39-6110, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 11, p. 325; am. 2017, ch. 72, § 7, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, added subsection (1)(d) and redesignated former subsection (1)(d) as subsection (1)(e).

The 2017 amendment, by ch. 72, rewrote subsection (1) to the extent that a detailed comparison is impracticable; and substituted “practice care location” for “primary care location” near the middle of paragraph (2)(c).

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6111. Criteria for the J-1 petitioning physician. — (1) The petitioning physician must not have a J-1 visa waiver pending for any other employment offer, and must provide a notarized statement testifying to this fact.

(2) The physician must have the qualifications described in recruitment efforts for a specific vacancy.

(3) Petitioning physicians must:

(a) Provide direct patient care full time; and (b) Be trained in:

(i) Family medicine;

(ii) Internal medicine;

(iii) Pediatrics;

(iv) Obstetrics and gynecology;

(v) General surgery;

(vi) Psychiatry and its subspecialties; or (vii) Other specialties licensed or eligible for licensure by the Idaho board of medicine, if there is a demonstrated need by the applicant organization.

(4) Physicians must apply and be eligible for an active Idaho medical license. The petitioning physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of their residency training program for their employment contract to be activated. The petitioning physician must have an unrestricted license to practice in the state of Idaho and be board certified or eligible in his respective medical specialty at the commencement of employment. A copy of the acknowledgment of receipt form from the state board of medicine must be included in the waiver request.

(5) Physicians must have at least one (1) recommendation from their residency program that: (a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States; (b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States

health care facilities; (c) Documents the level of specialty training, if any; (d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and (e) Includes name, title, relationship to physician, address, and telephone number of signatory.

(6) The petitioning physician must agree with all provisions of the employment contract as described in [section 39-6109, Idaho Code](#). Other negotiable terms of the contract are between the petitioning physician and the hiring agency.

(7) The petitioning physician must:

(a) Agree to work full time for no less than three (3) years in an area of underservice in the state of Idaho; (b) Provide health care to medicare and medicaid beneficiaries; (c) Post and implement a sliding fee discount schedule; (d) Serve the low-income population; (e) Serve the uninsured population; and (f) Serve the shortage designation population; or (g) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

History.

[I.C., § 39-6111](#), as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 12, p. 325; am. 2014, ch. 61, § 2, p. 144; am. 2017, ch. 72, § 8, p. 171.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Amendments.

The 2009 amendment, by ch. 106, in the section catchline, inserted “J-1 petitioning”; and in subsection (4), substituted “must apply and be eligible for an active Idaho medical license” for “must have an active Idaho medical license” in the first sentence, added “at the commencement of employment” in the third sentence, and substituted “copy of the acknowledgement of receipt form from the state board of medicine” for “copy of the license” in the last sentence.

The 2014 amendment, by ch. 61, in subsection (3), inserted present paragraph (b)(v) and redesignated former paragraph (b)(v) as paragraph (b)(vi).

The 2017 amendment, by ch. 72, inserted “petitioning” preceding “physician” near the beginning of subsections (1), (3), (6), and (7), and in the second and third sentences in subsection (4) and near the middle of the last sentence in subsection (6); and added paragraph (3)(b)(vii).

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6111A. Flex waivers for J-1 petitioning physicians. — The department will accept no more than ten (10) waiver applications six (6) months after the beginning of each federal fiscal year for petitioning J-1 visa waiver physicians to work in areas without a federal shortage area designation. The practice and petitioning physician must serve patients who reside in federally designated areas of underservice. The maximum number of flex applications may not exceed the total number of waiver slots available.

(1) The practice location must be located outside of a federally designated shortage area to apply for a flex waiver.

(2) The applicant organization and petitioning physician must meet all eligibility, application and reporting requirements with the exception of the practice location.

(3) The applicant organization must submit documentation demonstrating how the practice location and petitioning physician will serve patients who reside in federally designated areas of underservice.

(4) The maximum number of flex waiver applications available for specialists is limited to no more than five (5) per federal fiscal year.

(5) Flex waiver applications must demonstrate a need for the primary care or specialty petitioning physician.

History.

I.C., § 39-6111A, as added by 2017, ch. 72, § 9, p. 171.

STATUTORY NOTES

Compiler's Notes.

Former § 39-6111A was amended and redesignated as § 39-6111B, pursuant to S.L. 2017, ch. 72, § 10.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6111B. Criteria for the national interest waiver petitioning physician. — The national interest waiver petitioning physician must:

(1)(a) Provide direct patient care full time; and (b) Be trained in:

(i) Family medicine;

(ii) Internal medicine;

(iii) Pediatrics;

(iv) Obstetrics and gynecology; (v) General surgery; or

(vi) Psychiatry and its subspecialties.

(2) Apply and be eligible for an active Idaho medical license. The physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of his residency training program for his employment contract to be activated. The physician must have an unrestricted license to practice in the state of Idaho and be board certified or eligible in his respective medical specialty at the commencement of employment. A copy of the acknowledgment of receipt form from the state board of medicine must be included in the waiver request.

(3) Have at least one (1) recommendation from their residency program and one (1) from a previous employer, if applicable, that: (a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States; (b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; (c) Documents the level of specialty training, if any; (d) Is prepared on residency program letterhead or the employer's business letterhead and is signed by residency program staff or faculty; and (e) Includes name, title, relationship to physician, address and phone number of signatory.

(4) Agree with all provisions of the employment contract as described in [section 39-6109A, Idaho Code](#). Other negotiable terms of the contract are between the physician and the hiring agency.

(5)(a) Agree to work full time for no less than five (5) years in an area of underservice in the state of Idaho unless the physician qualifies for the three (3) year service provision under the applicable national interest waiver rules and regulations or the physician is transferring from another area of underservice; (b) Provide health care to medicare and medicaid beneficiaries; (c) Post and implement a sliding fee discount schedule; (d) Serve the low-income population; (e) Serve the uninsured population; and (f) Serve the shortage designation population; or (g) Serve the population of a local, state or federal governmental institution or corrections facility as an employee of the institution.

History.

I.C., § 39-6111A, as added by 2009, ch. 106, § 13, p. 325; am. 2014, ch. 61, § 3, p. 144; am. and redesign. 2017, ch. 72, § 10, p. 171.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Amendments.

The 2014 amendment, by ch. 61, in subsection (1), inserted present paragraph (b)(v) and redesignated former paragraph (b)(v) as paragraph (b)(vi).

Compiler's Notes.

This section was formerly compiled as § 39-6111A and was redesignated as this section, pursuant to S.L. 2017, ch. 72, § 10.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6112. Joint reporting requirement upon commencement of practice. — (1) Notification of waiver status and commencement of employment must be submitted to the department upon receipt of written notification of approval from the immigration agency. This notification must include the date the medical service obligation commences, and a copy of the notification of approval from the immigration agency.

(2) The waiver physician and the applicant must, on commencement of practice and annually thereafter or more frequently as determined by the department, and upon expiration of the physician's service obligation to the underserved area, verify the physician's practice site address and field of practice. Further, documentation that the population the physician was to serve was indeed served must be submitted. This will include the facility's payer mix, the number of patients seen by the physician, and the payer mix of those patients. When submitting the final report, the physician must indicate whether he intends to remain in the shortage area to practice.

(3) Sites receiving waiver approval must agree to report to the department on the status of the physician's activities at the beginning of the physician's employment and every year thereafter during the three (3) to five (5) year medical service obligation period. Failure to provide these reports within thirty (30) days of the annual anniversary date of approval of the J-1 visa or national interest waiver in an accurate manner or failure to demonstrate good faith in utilizing a physician's services in accordance with these policies will jeopardize future eligibility for placements and will be cause for reporting and referral to the United States department of state and immigration agency. This referral could ultimately lead to deportation proceedings against the physician.

(4) Any amendments made to the required elements of the employment contract during the physician's medical service obligation must be reported to the department for review. The department will complete review and provide notice of approval or declination of such amendments within thirty (30) calendar days of receipt.

History.

I.C., § 39-6112, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 14, p. 325; am. 2017, ch. 72, § 11, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, substituted “the medical service obligation” for “the three (3) year obligation” in the second sentence in subsection (1); substituted “the physician’s service obligation to the underserved area” for “the first three (3) years of the contract” in the first sentence in subsection (2); in subsection (3), substituted “the three (3) to five (5) year medical service obligation period” for “the three (3) year waiver service period” in the first sentence, inserted “or national interest waiver” in the second sentence, and deleted “J-1” preceding “physician” at the end of the last sentence; and substituted “the physician’s medical service obligation” for “the first three (3) years for primary care physicians of contracted employment” in the first sentence in subsection (4).

The 2017 amendment, by ch. 72, in subsection (2), inserted “waiver” near the beginning of the first sentence and deleted “for population designated health professional shortage areas” following “Further” at the beginning of the second sentence.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6113. Application fee. — At the time the application is submitted to the department, an administrative fee must be paid to the department by the applicant. The fee amount will be determined by the director of the department, will not be less than one thousand dollars (\$1,000) for a J-1 visa waiver request, and three hundred fifty dollars (\$350) for a national interest waiver request, and may be revised at the beginning of the state fiscal year by the director based on costs to administer the program. The fee is nonrefundable.

History.

I.C., § 39-6113, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 15, p. 325.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, inserted “for a J-1 visa waiver request, and three hundred fifty dollars (\$350) for a national interest waiver request” in the second sentence.

§ 39-6114. Required application forms and accompanying documents for a J-1 visa waiver request. — (1) Applications for the J-1 visa waiver program must include, but not be limited to, the following:

- (a) Evidence the applicant has no other mechanism through another process or interested government agency to apply for a J-1 visa waiver for the petitioning physician;
- (b) Evidence of recruiting efforts over a minimum of six (6) months prior to when the physician applied for the vacancy; this must include regional and national electronic or print advertising stating the position available and the practice site location. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of electronic or print advertisements if the activities described in this section are provided under contract. Recruitment firm contracts must be included if applicable;
- (c) Evidence that the petitioning physician selected for the position visited the practice site;
- (d) A mailing list of physicians who applied for the position and the reason they were not selected;
- (e) Evidence that the applicant has been providing medical or mental health care in Idaho for at least twelve (12) months or meets the requirements for a new start as defined in this chapter. This includes, but may not be limited to, the Idaho taxpayer identification number, facility address, fax and telephone numbers, and staffing list;
- (f) A copy of an employment contract between the petitioning physician and the applicant for no less than three (3) years;
- (g) Evidence that the employment site is in a designated area of underservice;

- (h) The request must be submitted by the applicant or applicant's representative. The letter must be written on the applicant's letterhead stationery, which includes address, telephone and fax numbers, if any. Letters, contracts and forms must contain original signatures;
- (i) A copy of the sliding fee scale which the health care facility must agree to implement and post;
- (j) A copy of the petitioning physician's license to practice medicine in the state of Idaho, or proof of the physician's eligibility to apply for an Idaho license;
- (k) Legible copies of all IAP-66/DS 2019 forms (certificate of eligibility for exchange visitor status), covering every period the physician was in J-1 status, submitted in chronological order;
- (l) Legible copies (front and back) of all I-94 entry and departure cards for the physician and family members;
- (m) The petitioning physician's curriculum vitae;
- (n) A statement of "no objection from the government" of the petitioning physician's country of nationality, if applicable. The government of the country to which the petitioning physician is otherwise contractually obliged to return must furnish a letter to the director of the United States department of state with a statement in writing that there is no objection to such waiver in cases where the petitioning physician's medical education or training is funded by the government of the petitioning physician's home country. Whether or not there is foreign government funding can be determined from examining the physician's IAP-66 form. This letter must be in English and follow the procedures and format outlined in federal register volume 60, number 197, published October 12, 1995 (or subsequent revisions);
- (o) Payment of the department's administrative application processing fee;
- (p) Federal form G-28 or letterhead from the law office, if the physician is being represented by an attorney, with telephone and fax numbers, and a contact name and address;

(q) A copy of the United States department of state issued instruction sheet with case number.

(2) The state may require any other documentation or information for the support and approval process in the waiver application on the part of the petitioning physician or the applicant.

(3) These requirements are subject to change without notice.

(4) J-1 visa waiver program application forms and instructions are available and may be requested from the department.

(5) The petitioning physician's case number must appear on each page. The case number is assigned by the United States department of state.

(6) All required information and documentation must be submitted in a single package with all documents presented per instructions that will be provided by the department upon request. One (1) single-sided, unbound original and one (1) single-sided, unbound copy must be included. Waiver requests that do not comply with these requirements and the instructions provided by the department will not be considered.

History.

I.C., § 39-6114, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 16, p. 325; am. 2017, ch. 72, § 12, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in the section catchline, added “for a J-1 visa waiver request”; in the introductory language in subsection (1) and in subsection (4), deleted “Idaho conrad” preceding “J-1 visa waiver”; and, in subsection (1)(j), added “in the state of Idaho, or proof of the physician’s eligibility to apply for an Idaho license.”

The 2017 amendment, by ch. 72, inserted “petitioning” preceding “physician” throughout the section; and in paragraph (1)(b), in the first sentence, inserted “electronic or” near the middle and deleted “and at least six (6) certified letters to medical schools to advertise the vacancy” from the

end, and substituted “electronic or print advertisements” for “print advertisements or letters” near the middle of the fifth sentence.

Compiler’s Notes.

The J-1 visa waiver and national interest waiver programs are administered by the state office of rural health and primary care. See <http://www.healthandwelfare.idaho.gov/HealthRuralHealthandPrimaryCare/J1VisaWaiverNationalInterestWaiver/tabid/413/Default.aspx>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6114A. Required application forms and documents for a national interest waiver request. — (1) Applications for the national interest waiver program must include, but not be limited to, the following:

(a) Evidence of recruiting efforts over a minimum of six (6) months prior to when the petitioning physician applied for the vacancy. This evidence must include regional and national electronic or print advertising stating the position available and the practice site location. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of electronic or print advertisements if the activities described in this paragraph are provided under contract. Recruitment firm contracts must be included, if applicable. The provision of evidence for recruitment efforts over a six (6) month period is not necessary for national interest waiver petitioning physicians who receive a J-1 visa waiver at the request of the state of Idaho;

(b) Evidence that the physician selected for the position visited the practice site;

(c) A mailing list of physicians who applied for the position and the reason they were not selected;

(d) Evidence that the applicant has been providing medical or mental health care in Idaho for at least twelve (12) months or meets the requirements for a new start as defined in [section 39-6105, Idaho Code](#). This includes, but may not be limited to, the Idaho taxpayer identification number, facility address, fax and telephone numbers and staffing list;

(e) A copy of an employment contract between the physician and the applicant;

(f) Evidence that the employment site is in a federally determined area of underservice;

(g) The request must be submitted by the applicant or applicant's representative. The letter must be written on the applicant's letterhead

stationery, which includes address, telephone and fax numbers, if any. Letters, contracts and forms must contain original signatures;

(h) A copy of the sliding fee scale which the health care facility must agree to implement and post;

(i) A copy of the physician's license to practice medicine in the state of Idaho, or eligibility to apply for an Idaho license;

(j) Legible copies of any DS 2019 forms (formerly IAP-66), and other United States immigration documentation attesting to the physician's current legal status and history of stay in the United States;

(k) The physician's curriculum vitae; and

(l) Payment of the department's administrative application processing fee.

(2) The state of Idaho may require any other documentation or information for the support and approval process in the waiver application on the part of the physician or the applicant.

(3) These requirements are subject to change without notice.

History.

I.C., § 39-6114A, as added by 2009, ch. 106, § 17, p. 325; am. 2017, ch. 72, § 13, p. 171.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 72, in paragraph (1)(a), in the first sentence, inserted "petitioning" and, in the second sentence, inserted "electronic or" preceding "print advertising" near the middle and deleted "and at least six (6) certified letters to medical schools to advertise the vacancy" from the end, and substituted "electronic or print advertisements" for "print advertisements or letters" near the middle of the fifth sentence.

Compiler's Notes.

The J-1 visa waiver and national interest waiver programs are administered by the state office of rural health and primary care. See

<http://www.healthandwelfare.idaho.gov/RuralHealthandPrimaryCare/J1VisaWaiverNationalInterestWaiver/tabid/413/Default.aspx>

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6115. Criteria applied to federally designated facilities. — Local, state, or federal institutions which offer health care services and are federally designated as a shortage facility accompanied by a health professional shortage area score may submit an application. Physician services may be limited to the population of the institution. All other state and federal requirements must be met.

History.

I.C., § 39-6115, as added by 2004, ch. 128, § 1, p. 437; am. 2017, ch. 72, § 14, p. 171.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 72, substituted “health care services” for “primary care services” near the beginning of the first sentence.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6116. Department review and action. — (1) The department will review applications for completeness in date order received.

(2) Applications submitted for petitioning physicians with language skills appropriate to the community they wish to serve will be given priority.

(3) Selection preference will be given to applications received from health professional shortage areas having the greatest unmet need for physicians.

(4) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent electronically. The department is not responsible for applications or related materials lost in the mail.

(5) The department may limit the time period during which applications may be submitted including refusing to process applications after the department has submitted requests for all applications allowed in a given federal fiscal year.

(6) In the event an applicant for a J-1 visa waiver or a national interest waiver submits an application to the department, the department will acknowledge receipt of the copy of the application within five (5) business days of receipt.

(7) The department will review applications within thirty (30) working days of receipt of the application to determine if the application is complete, and provide a written explanation of missing items.

(8) An additional fee will not be charged for incomplete applications if the missing items are provided within thirty (30) calendar days of the date on the letter of explanation from the department. If new information is not received within this time frame, the application will be returned to the applicant. The application fee will not be returned.

(9) The department will return applications and application fees to applicants having had two (2) approved J-1 visa waiver requests in the current federal fiscal year for the shortage area or applications received after thirty (30) placements have been recommended.

(10) The department will review complete applications against the criteria specified in this chapter.

(11) The department may:

(a) Request additional clarifying information;

(b) Verify information presented;

(c) Investigate the financial status of the applicant;

(d) Request verification of the health care facility's payer mix for the previous twelve (12) to eighteen (18) months; and

(e) Return the application as incomplete if the applicant does not supply the requested clarifying information in its entirety within thirty (30) days of request. The application fee is nonrefundable. Incomplete applications must be resubmitted with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(12) The department may request the director of the United States department of state to recommend that the immigration agency grant the J-1 visa waiver.

(13) The department may provide a letter of attestation to the immigration agency that the physician's work in Idaho is in the public interest for a national interest waiver.

(14) The department will notify the applicant in writing of action taken by the department. If the decision is to decline the J-1 visa waiver or national interest waiver request, the department will provide an explanation of how the application failed to meet the stated criterion or criteria. The application fee is nonrefundable.

(15) The department may deny a J-1 visa waiver or national interest waiver request or, prior to United States department of state or immigration agency approval, may withdraw a J-1 visa waiver or national interest waiver recommendation for cause, which shall include the following:

(a) The application is not consistent with state or federal criteria;

(b) Fraud;

- (c) Misrepresentation;
- (d) False statements;
- (e) Misleading statements;
- (f) Evasion or suppression of material facts in the J-1 visa waiver or national interest waiver application or in any of its required documentation and supporting materials;
- (g) Incomplete or insufficient information;
- (h) Allowable number of recommendations for the facility or year has been met.

(16) Applications denied may be resubmitted with concerns addressed, with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(17) The department retains the authority to audit, monitor and conduct unannounced site visits.

History.

I.C., § 39-6116, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 18, p. 325; am. 2017, ch. 72, § 15, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in subsections (6) and (14), and throughout subsection (15), inserted “or a national interest waiver” or similar language; in subsection (12), inserted “J-1 visa”; added subsection (13) and redesignated the subsequent subsections accordingly; in the introductory paragraph in present subsection (15), twice inserted “J-1” and inserted “or immigration agency”; and in subsection (15)(f), inserted “J-1.”

The 2017 amendment, by ch. 72, inserted “petitioning” near the beginning of the subsection (2); substituted “health professional shortage area having the greatest unmet need for physicians” for “HPSAs having the greatest unmet need for primary care physicians” at the end of subsection (3); substituted “thirty (30) working days” for “fifteen (15) working days” near the beginning of subsection (7); substituted “shortage area or

applications” for “shortage area, applications received that exceed the designation threshold limit, and applications” near the end of subsection (9); and substituted “facility” for “area” near the end of paragraph (15)(h).

Compiler’s Notes.

For more on health professional shortage areas, referred to in subsection (3), see <http://healthandwelfare.idaho.gov/Health/oRuralHealthandPrimaryCare/ShortageDesignations/tabid/415/Default.aspx>.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6117. Eligibility for future participation. — Health care facilities may be denied future participation in the J-1 visa waiver program or national interest waiver program if:

(1) The required annual reports are not submitted in a complete and timely manner; (2) A waiver physician does not serve the designated shortage area or shortage population approved at the time of placement for the full three (3) to five (5) years of employment. This does not apply only if the approved site is in a designated health professional shortage area that loses its designation after the waiver physician begins employment; (3) A waiver physician does not remain employed by the applicant for the full three (3) to five (5) years of employment; (4) The applicant or waiver physician is not in compliance with the terms defined in this chapter or any federal requirements.

History.

I.C., § 39-6117, as added by 2004, ch. 128, § 1, p. 437; am. 2009, ch. 106, § 19, p. 325; am. 2017, ch. 72, § 16, p. 171.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 106, in the introductory paragraph, deleted “Idaho conrad” preceding “J-1 visa waiver” and inserted “or national interest waiver program”; and, in subsections (2) and (3), inserted “to five (5).”

The 2017 amendment, by ch. 72, inserted “waiver” preceding “physician” throughout the section.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

§ 39-6118. Department responsibility to report. — The department shall report to the United States department of state and the immigration agency if the applicant or waiver physician is determined to be out of compliance with any of the provisions of this chapter or if the waiver physician is determined to have left employment in the federally designated area.

History.

I.C., § 39-6118, as added by 2004, ch. 128, § 1, p. 437; am. 2017, ch. 72, § 17, p. 171.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 72, inserted “waiver” preceding “physician” throughout the section.

Effective Dates.

Section 18 of S.L. 2017, ch. 72 declared an emergency. Approved March 20, 2017.

Chapter 62
PCB WASTE DISPOSAL

Sec.

39-6201 — 39-6216. [Repealed.]

§ 39-6201. Short title. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6201**, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6202. Legislative findings and purposes. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6202**, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6203. Definitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6203**, as added by 1987, ch. 198, § 1, p. 411; am. 2001, ch. 103, § 54, p. 253, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6204. Legislative intent. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6204, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6205. Rules and regulations in general. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6205, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6206. General powers and duties of director. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6206, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

**§ 39-6207. Unauthorized disposal of PCB waste prohibited.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6207, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6208. Records — Reporting — Monitoring. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6208, as added by 1987, ch. 198, § 1, p. 411; am. 1990, ch. 213, § 50, p. 480, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6209. Investigation — Inspection — Right of entry. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6209, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6210. Enforcement procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6210, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6211. Remedies. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6211**, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6212. Violation — Penalty — Misdemeanor. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6212, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6213. Interstate cooperation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 39-6213**, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6214. Employment security. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6214, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6215. Good samaritan protection. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6215, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

§ 39-6216. Severability. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-6216, as added by 1987, ch. 198, § 1, p. 411, was repealed by S.L. 2007, ch. 83, § 7.

Chapter 63

DOMESTIC VIOLENCE CRIME PREVENTION

Sec.

39-6301. Short title.

39-6302. Statement of purpose.

39-6303. Definitions.

39-6304. Action for protection.

39-6305. Fees waived.

39-6306. Hearing on petition for protection order — Relief provided and realignment of designation of parties.

39-6306A. Uniform interstate enforcement of domestic violence protection orders act.

39-6307. Security.

39-6308. Ex parte temporary protection order.

39-6309. Issuance of order — Assistance of peace officer — Designation of appropriate law enforcement agency.

39-6310. Order and service.

39-6311. Order — Transmittal to law enforcement agency — Record in Idaho public safety and security information system — Enforceability.

39-6312. Violation of order — Penalties.

39-6313. Order — Modification — Transmittal.

39-6314. Peace officers — Immunity.

39-6315. Proceedings additional.

39-6316. Law enforcement officers — Training, powers, duties.

39-6317. Severability.

39-6318. Order for transfer of wireless telephone service.

§ 39-6301. Short title. — This chapter shall be known and may be cited as the “Domestic Violence Crime Prevention Act.”

History.

I.C., § 39-6301, as added by 1988, ch. 341, § 1, p. 1013.

CASE NOTES

Standard of Proof.

The standard of proof in protection order proceedings under the domestic violence crime prevention act is by a preponderance of the evidence. *Ellibee v. Ellibee*, 121 Idaho 501, 826 P.2d 462 (1992).

§ 39-6302. Statement of purpose. — For purposes of this chapter, the legislature adopts by reference the declaration of policy in [section 39-5201, Idaho Code](#). Additionally, the legislature finds that a significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Furthermore, research shows that domestic violence is a crime which can be deterred, prevented or reduced by legal intervention. Domestic violence can also be deterred, prevented or reduced by vigorous prosecution by law enforcement agencies and prosecutors and by appropriate attention and concern by the courts whenever reasonable cause exists for arrest and prosecution.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the protection from abuse which the law and those who enforce the law can provide.

It is the intent of the legislature to expand the ability of the courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent such further incidents of abuse. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is the intent of the legislature to presume the validity of protection orders issued by courts in all states, the District of Columbia, United States territories and all federally recognized Indian tribes within the United States, and to afford full faith and credit to those orders. The provisions of this chapter are to be construed liberally to promote these purposes.

History.

[I.C., § 39-6302](#), as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 1, p. 305; am. 1999, ch. 330, § 1, p. 888.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the second paragraph refers to S.L. 1988, ch. 341, which is codified as §§ 39-6301 to 39-6306 and 39-6307 to 39-6317.

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

§ 39-6303. Definitions. — (1) “Domestic violence” means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship.

(2) “Dating relationship,” for the purposes of this chapter, is defined as a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The nature of the relationship;

(b) The length of time the relationship has existed; (c) The frequency of interaction between the parties; and (d) The time since termination of the relationship, if applicable.

(3) “Family member” means spouses, former spouses and persons related by blood, adoption or marriage.

(4) “Family dwelling” is any premises in which the petitioner resides.

(5) “Foreign protection order” means a protection order issued by a tribunal of another state.

(6) “Household member” means persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(7) “Judicial day” means any day upon which court business may be transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

(8) “Protection order” means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued: (a) Pursuant to this chapter;

(b) In another jurisdiction pursuant to a provision similar to [section 39-6306, Idaho Code](#); or (c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking protection, and issued after

giving notice and an opportunity to respond to the person being restrained.

(9) “Respondent” means the individual against whom enforcement of a protection order is sought.

History.

I.C., § 39-6303, as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 2, p. 305; am. 1999, ch. 330, § 2, p. 888; am. 2000, ch. 136, § 1, p. 355; am. 2002, ch. 213, § 1, p. 587; am. 2002, ch. 331, § 1, p. 937; am. 2003, ch. 16, § 9, p. 48.

STATUTORY NOTES

Amendments.

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 213, added the definition of “foreign protection order,” redesignated the subsequent subsections accordingly, and added the definition of “respondent.”

The 2002 amendment, by ch. 331, added the language beginning “or of an adult” at the end of the definition of “domestic violence,” rewrote the definition of “family member,” added the definition of “household member,” and redesignated the subsequent subsections accordingly.

Legislative Intent.

Section 4 of S.L. 2000, ch. 136 provides: “In enacting this legislation it is the intent of the Legislature to recognize the rights of parents to provide protection for their minor children. No other intent is expressed or implied.”

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

CASE NOTES

Dating relationship.

Former spouse.

Dating Relationship.

In a prosecution under § 18-923, definition of “dating relationship” was not facially vague because it could not be said that there was no type of relationship that plainly fell within this definition. *State v. Laramore*, 145 Idaho 428, 179 P.3d 1084 (Ct. App. 2007).

Former Spouse.

Even though former husband had joint legal custody of children, the domestic violence crime prevention act was the proper vehicle for divorced mother to obtain protection order against her former husband in favor of their children. *Ellibee v. Ellibee*, 121 Idaho 501, 826 P.2d 462 (1992).

§ 39-6304. Action for protection. — (1) There shall exist an action known as a “petition for a protection order” in cases of domestic violence.

(2) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the magistrates division of the district court, alleging that the person or a family or household member, whether an adult or a child, is the victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter. A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child who is the victim of domestic violence.

(3) A person’s right to petition for relief under this chapter shall not be affected by that person’s having left the residence or household to avoid abuse.

(4) The petition shall disclose the existence of any custody or any marital annulment, dissolution or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection or adoption proceedings affecting the children of any party.

(5) When the petitioner requests custody of any child, the petition shall disclose:

(a) The county and state where the child has resided for six (6) months immediately prior to the filing of the petition;

(b) The party or other responsible person with whom the child is presently residing; and

(c) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(6) A petition shall be filed in the county of the respondent’s residence, the petitioner’s residence, or where the petitioner is temporarily residing.

History.

I.C., § 39-6304, as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 3, p. 305; am. 2000, ch. 136, § 2, p. 355.

STATUTORY NOTES

Legislative Intent.

Section 4 of S.L. 2000, ch. 136 provides: “In enacting this legislation it is the intent of the Legislature to recognize the rights of parents to provide protection for their minor children. No other intent is expressed or implied.”

CASE NOTES

Former spouse.

Protection order.

Former Spouse.

Even though former husband had joint legal custody of children, the domestic violence crime prevention act was the proper vehicle for divorced mother to obtain protection order against her former husband in favor of their children. *Ellibee v. Ellibee*, 121 Idaho 501, 826 P.2d 462 (1992).

Protection Order.

Ninety-day protection order was properly entered under this chapter, because the testimony of the petitioner and the petitioner’s then spouse suggested that the spouse could act unpredictably, and in a potentially dangerous manner, and that the spouse constituted a threat to the bodily safety of both the petitioner and the petitioner’s child. *Turner v. Turner*, 155 Idaho 819, 317 P.3d 716 (2013).

§ 39-6305. Fees waived. — No filing fee, service fee, hearing fee or bond shall be charged for proceedings seeking only the relief provided under this chapter.

History.

I.C., § 39-6305, as added by 1988, ch. 341, § 1, p. 1013.

§ 39-6306. Hearing on petition for protection order — Relief provided and realignment of designation of parties. — (1) Upon filing of a petition based upon a sworn affidavit for a protection order, the court shall hold a hearing to determine whether the relief sought shall be granted within fourteen (14) days. If either party is represented by counsel at a hearing seeking entry of a protection order, the court shall permit a continuance, if requested, of the proceedings so that counsel may be obtained by the other party. If the court finds that it is necessary for both parties to be represented by counsel, the court shall enter appropriate orders to ensure that counsel is retained. The order entered may require either the petitioner or respondent, or both, to pay for costs of counsel. Upon a showing that there is an immediate and present danger of domestic violence to the petitioner the court may, if requested, order for a period not to exceed one (1) year that:

- (a) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if exercise of such jurisdiction is consistent with the provisions of [section 32-11-204, Idaho Code](#), and consistent with prior custody orders entered by a court of competent jurisdiction unless grounds exist pursuant to [section 32-717, Idaho Code](#);
- (b) A party be restrained from committing acts of domestic violence;
- (c) Exclude the respondent from the dwelling which the parties share or from the residence of the petitioner;
- (d) The respondent be ordered to participate in treatment or counseling services. The council on domestic violence [and victim assistance], in recognition of the particular treatment requirements for batterers, shall develop minimal program and treatment standards to be used as guidelines for recommending approval of batterer programs to the court;
- (e) Other relief be ordered as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter;

(f) The respondent be required to pay service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;

(g) The respondent be restrained from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner and any designated family member or specifically designated person of the respondent's household, including the minor children whose custody is awarded to the petitioner;

(h) The respondent be restrained from entering any premises when it appears to the court that such restraint is necessary to prevent the respondent from contacting, harassing, annoying, disturbing the peace of or telephoning the petitioner or the minor children whose custody is awarded to the petitioner; and/or

(i) The respondent be restrained from coming within one thousand five hundred (1,500) feet or other appropriate distance of the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family member or specifically designated person of the respondent's household, including the minor children whose custody is awarded to the petitioner.

(2) Immediate and present danger under this section includes, but is not limited to, situations in which the respondent has recently threatened the petitioner with bodily harm or engaged in domestic violence against the petitioner or where there is reasonable cause to believe bodily harm may result.

(3) No order made under this chapter shall in any manner affect title to real property.

(4) Relief shall not be denied because petitioner used reasonable force in self-defense against respondent, or because petitioner or respondent was a minor at the time of the incident of domestic violence.

(5) Any relief granted by the protection order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year; provided, that an order obtained pursuant to this chapter may, upon motion and upon good cause shown, continue for an appropriate time period as directed by the

court or be made permanent if the requirements of this chapter are met, provided the order may be terminated or modified by further order of the court either on written stipulation filed with the court or on the motion of a party and after a hearing on the motion. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered.

(6) In providing relief under this chapter, the court may realign the designation of the parties as “petitioner” and “respondent” where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

History.

I.C., § 39-6306, as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 4, p. 305; am. 1990, ch. 234, § 1, p. 667; am. 1991, ch. 300, § 1, p. 787; am. 1995, ch. 357, § 1, p. 1212; am. 2000, ch. 227, § 3, p. 623; am. 2006, ch. 287, § 1, p. 883.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 287, near the end of the introductory paragraph of subsection (1) and in subsection (5), substituted “one (1) year” for “three (3) months”; rewrote subsection (1)(g), which formerly read: “The respondent be restrained from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner; and/or”; in subsection (1)(h), substituted “harassing, annoying, disturbing the peace of or telephoning” for “molesting, interfering with or menacing”; added subsection (1)(i); in subsection (2), added “or where there is reasonable cause to believe bodily harm may result” at the end; and, in the first sentence of subsection (5), substituted “continue for an appropriate time period as directed by the court or be made permanent” for “be renewed for additional terms not to exceed one (1) year each,” and added the proviso at the end.

Compiler’s Notes.

The bracketed insertion in paragraph (1)(d) was added by the compiler to supply the full name of the referenced agency. See § 39-5203.

Effective Dates.

Section 2 of S.L. 2006, ch. 287 declared an emergency. Approved March 31, 2006.

CASE NOTES

Burden of proof.

Protection order.

Burden of Proof.

Burden of proof under this chapter is the preponderance of the evidence. *Turner v. Turner*, 155 Idaho 819, 317 P.3d 716 (2013).

Protection Order.

Ninety-day protection order was properly entered under this chapter, because the testimony of the petitioner and the petitioner's then spouse suggested that the spouse could act unpredictably, and in a potentially dangerous manner, and that the spouse constituted a threat to the bodily safety of both the petitioner and the petitioner's child. *Turner v. Turner*, 155 Idaho 819, 317 P.3d 716 (2013).

It was not an abuse of discretion to issue a civil protection order on a child's behalf against a father: (1) the father's claims of a right to discipline the child and protect the father from the child did not bar the order, as the father had no parental duty to exercise the discipline used, nor did the father act in self-defense or use reasonable force, and (2) an immediate and present danger of domestic violence warranted the issuance of the order, as the child's concussion and cervical strain were physical injuries sustained in a recent domestic violence incident. *Doe v. Doe*, 160 Idaho 854, 380 P.3d 175 (2016).

§ 39-6306A. Uniform interstate enforcement of domestic violence protection orders act. — (1) Short Title. This section may be cited as the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.”

(2) Definitions. As used in this section:

(a) “Issuing state” means the state whose tribunal issues a protection order.

(b) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(c) “Protected individual” means an individual protected by a protection order.

(d) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(e) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

(3) Judicial Enforcement of Order.

(a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A foreign protection order is valid if it:

(i) Identifies the protected individual and the respondent;

(ii) Is currently in effect;

(iii) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(iv) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(i) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(ii) The tribunal of the issuing state made specific findings in favor of the respondent.

(4) Nonjudicial Enforcement of Order.

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and

that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this subsection, the foreign protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a foreign protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this section.

(5) Registration of Order.

(a) Any individual may register a foreign protection order in this state pursuant to [section 39-6311, Idaho Code](#). To register a foreign protection order, an individual shall present a copy of a protection order which has been certified by the issuing state to a court of this state in order to be entered in the Idaho law enforcement telecommunications system pursuant to [section 39-6311, Idaho Code](#).

(b) An individual registering a foreign protection order shall file with the court an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) A fee may not be charged for the registration of a foreign protection order.

(d) A foreign protection order registered under this section may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(6) Immunity. This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this section.

(7) Uniformity of Application and Construction. In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(8) Transitional Provision. This section applies to foreign protection orders issued before July 1, 2002, and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2002. A request for enforcement of a foreign protection order made on or after July 1, 2002, for violations of a foreign protection order occurring before that date is governed by this section.

History.

I.C., § 39-6306A, as added by 2002, ch. 213, § 3, p. 587; am. 2003, ch. 213, § 1, p. 558.

STATUTORY NOTES

Prior Laws.

Former § 39-6306A, which comprised **I.C., § 39-6306A**, as added by 1999, ch. 330, § 3, p. 888, was repealed by S.L. 2002, ch. 213, § 2.

CASE NOTES

Cited **State v. Hartzell**, 155 Idaho 107, 305 P.3d 551 (Ct. App. 2013).

§ 39-6307. Security. — Whenever a protection order is issued under this chapter, the issuing court may set a security amount for a violation of the order.

History.

I.C., § 39-6307, as added by 1988, ch. 341, § 1, p. 1013.

§ 39-6308. Ex parte temporary protection order. — (1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary protection order based upon the affidavit submitted or otherwise shall hold a hearing which may be ex parte on the day a petition is filed or on the following judicial day to determine whether the court should grant an ex parte temporary protection order, pending a full hearing, and grant such other relief as the court deems proper, including an order:

- (a) Restraining any party from committing acts of domestic violence;
- (b) Excluding any party from the dwelling shared or from the residence of the other until further order of the court;
- (c) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
- (d) Ordering other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter;
- (e) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;
- (f) Restraining the respondent from entering any premises when it appears to the court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the petitioner or the minor children whose custody is awarded to the petitioner; and/or
- (g) Restraining the respondent from taking more than personal clothing and toiletries and any other items specifically ordered by the court.

(2) An ex parte hearing to consider the issuance of a temporary protection order may be conducted by telephone in accordance with procedures established by the Idaho supreme court.

(3) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened the petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(4) The court shall hold an ex parte hearing on the day the petition is filed or on the following judicial day.

(5) An ex parte temporary protection order shall be effective for a fixed period not to exceed fourteen (14) days, but may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. If the ex parte temporary protection order substantially affects the respondent's rights to enter the domicile or the respondent's right to custody or visitation of the respondent's children and the ends of justice so require, the respondent may move the court for an order shortening the time period within which the hearing required under the provisions of [section 39-6306, Idaho Code](#), must be held. Motions seeking an order shortening the time period must be served upon the petitioner at least two (2) days prior to the hearing on the motion.

History.

[I.C., § 39-6308](#), as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 5, p. 305; am. 1990, ch. 234, § 2, p. 667.

CASE NOTES

[Probable cause for arrest for violation.](#)

[Protection order.](#)

[Probable Cause for Arrest for Violation.](#)

Police officers were not entitled to qualified immunity for false arrest claims brought against them where they could not have reasonably believed that the arrest complied with the [Fourth Amendment](#) since any reasonably competent officer would have ascertained the terms of the protection order before making the arrest for failing to comply with it. [Beier v. City of](#)

Lewiston, 354 F.3d 1058 (9th Cir. 2004), overruled on other grounds, *City of Los Angeles v. Mendez*, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017).

Protection Order.

Ninety-day protection order was properly entered under this chapter, because the testimony of the petitioner and the petitioner's then spouse suggested that the spouse could act unpredictably, and in a potentially dangerous manner, and that the spouse constituted a threat to the bodily safety of both the petitioner and the petitioner's child. *Turner v. Turner*, 155 Idaho 819, 317 P.3d 716 (2013).

§ 39-6309. Issuance of order — Assistance of peace officer — Designation of appropriate law enforcement agency. — When an order is issued or a foreign protection order is recognized under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution of the protection order. A certified copy of the order shall be prepared by the clerk for transmittal to the appropriate law enforcement agency as specified in [section 39-6311, Idaho Code](#). Orders issued or foreign protection orders recognized under this chapter shall include an instruction to the appropriate law enforcement agency to execute, serve, or enforce the order.

History.

[I.C., § 39-6309](#), as added by 1988, ch. 341, § 1, p. 1013; am. 1999, ch. 330, § 4, p. 888; am. 2002, ch. 213, § 4, p. 587.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

§ 39-6310. Order and service. — (1) An order issued under this chapter along with a copy of the petition for a protection order, if the respondent has not previously received the petition, shall be personally served upon the respondent, except as provided in subsections (6), (7) and (8) of this section.

(2) A peace officer of the jurisdiction in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party at the petitioner's own expense.

(3) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter and a copy of the petition for a protection order, if the respondent has not previously received the petition, forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the peace officer cannot complete service upon the respondent within ten (10) days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary.

(7) If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing or orders or modifications by certified mail to the party's address as shown on the court petition which resulted in the issuance of the order or modification. Parties shall at all times keep the court informed of their current mailing address.

(8) If a foreign protection order is registered with the court under [section 39-6306A, Idaho Code](#), the necessity for further service is waived and proof

of service of that order is not necessary.

History.

I.C., § 39-6310, as added by 1988, ch. 341, § 1, p. 1013; am. 1996, ch. 236, § 1, p. 765; am. 1997, ch. 69, § 1, p. 144; am. 1999, ch. 330, § 5, p. 888; am. 2000, ch. 72, § 1, p. 154; am. 2002, ch. 213, § 5, p. 587.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

CASE NOTES

Duty to Serve.

Where the record supported the conclusion that there was a substantial basis for the issuance of a protection order, it was the duty of the deputy to serve the order upon issuance. **State v. Mathews**, 133 Idaho 300, 986 P.2d 323 (1999), cert. denied, 528 U.S. 1168, 120 S. Ct. 1190, 145 L. Ed. 2d 1095 (2000).

§ 39-6311. Order — Transmittal to law enforcement agency — Record in Idaho public safety and security information system — Enforceability. — (1) The orders issued under sections 39-6306 and 39-6308, Idaho Code, or foreign protection orders recognized under [section 39-6306A, Idaho Code](#), shall be in a form approved by the supreme court of the state of Idaho.

(2)(a) A copy of a protection order granted or a foreign protection order recognized under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

(b) Upon receipt of the order, the law enforcement agency shall forthwith enter the order and its expiration date into the Idaho public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Notification of service as required in [section 39-6310, Idaho Code](#), shall also be entered into the Idaho public safety and security information system upon receipt. Entry into the Idaho public safety and security information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state. Renewals of the order shall be recorded in the same manner as original orders. The information entered shall specifically state that the protection order is civil in nature. If the appropriate law enforcement agency determines that the service information sheet is incomplete or cannot be entered into the Idaho public safety and security information system upon receipt, the service information sheet shall be returned to the clerk of the court. The clerk of the court shall then notify the petitioner of the error or omission.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident of domestic violence may be informed of the existence and terms of such protection order.

(4) A protection order shall remain in effect for the term set by the court or until terminated by the court. A protection order may, upon motion and upon good cause shown, be renewed for additional terms not to exceed one

(1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered. If the petitioner voluntarily and without duress consents to the waiver of any portion of the protection order vis-a-vis the respondent pursuant to [section 39-6313, Idaho Code](#), the order may be modified by the court.

History.

[I.C., § 39-6311](#), as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 6, p. 305; am. 1990, ch. 293, § 1, p. 813; am. 1991, ch. 300, § 2, p. 787; am. 1995, ch. 357, § 2, p. 1212; am. 1996, ch. 362, § 1, p. 1218; am. 1999, ch. 330, § 6, p. 388; am. 2002, ch. 213, § 6, p. 587; am. 2013, ch. 187, § 6, p. 447.

STATUTORY NOTES

Cross References.

Idaho public safety and security information system, § 19-5201 et seq.

Amendments.

The 2013 amendment, by ch. 187, substituted “Idaho public safety and security information system” for “Idaho law enforcement telecommunications system” in the section heading and throughout the section.

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

CASE NOTES

Cited [State v. Whiteley, 124 Idaho 261, 858 P.2d 800 \(Ct. App. 1993\).](#)

§ 39-6312. Violation of order — Penalties. — (1) Whenever a protection order is granted and the respondent or person to be restrained had notice of the order, a violation of the provisions of the order or of a provision excluding the person from a residence shall be a misdemeanor punishable by not to exceed one (1) year in jail and a fine not to exceed five thousand dollars (\$5,000), ten dollars (\$10.00) of which shall be deposited to the credit of the domestic violence project account created in [section 39-5212, Idaho Code](#).

(2) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order, if the person restrained had notice of the order.

(3) The person against whom a protection order has been issued by an out-of-state court is presumed to have notice of the order if the victim presents to the officer proof of service of the order.

History.

[I.C., § 39-6312](#), as added by 1988, ch. 341, § 1, p. 1013; am. 1990, ch. 234, § 3, p. 667; am. 1991, ch. 169, § 1, p. 409; am. 1999, ch. 330, § 7, p. 388.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

CASE NOTES

[Arrest following violation of order.](#)

[Order not violates.](#)

[Search following violation of order.](#)

[Arrest Following Violation of Order.](#)

Police officers were not entitled to qualified immunity for false arrest claims brought against them where they could not have reasonably believed that the arrest complied with the **Fourth Amendment** since any reasonably competent officer would have ascertained the terms of the protection order before making the arrest for failing to comply with it. **Beier v. City of Lewiston**, 354 F.3d 1058 (9th Cir. 2004), overruled on other grounds, **City of Los Angeles v. Mendez**, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017).

Order Not Violates.

Defendant who was served with a protection order, stating that he was not to “harass, annoy, [or] disturb the peace of” his former wife and her children, did not violate that order by subsequently having the electrical power turned off to a home that he owned and that the ex-wife and children lived in. **State v. Pierce**, 159 Idaho 661, 365 P.3d 417 (Ct. App. 2015).

Search Following Violation of Order.

Where defendant’s arrest was legal on the basis of his violation of a civil protection order (CPO), and where defendant consented to a search of his duffel bag immediately following his arrest, the evidence found in the duffel bag as a result of the search was properly admissible. **State v. Whiteley**, 124 Idaho 261, 858 P.2d 800 (Ct. App. 1993).

§ 39-6313. Order — Modification — Transmittal. — Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing protection order. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modification or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the Idaho law enforcement telecommunications system [public safety and security information system].

History.

I.C., § 39-6313, as added by 1988, ch. 341, § 1, p. 1013.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the last sentence was added by the compiler to update the name of the referenced system. See § 19-5201 et seq.

§ 39-6314. Peace officers — Immunity. — No peace officer may be held criminally or civilly liable for actions or omissions in the performance of the duties of his office under this chapter, including the enforcement of out-of-state protection orders, if the peace officer acts in good faith and without malice.

History.

I.C., § 39-6314, as added by 1988, ch. 341, § 1, p. 1013; am. 1999, ch. 330, § 8, p. 388.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1999, ch. 330 declared an emergency. Approved March 24, 1999.

§ 39-6315. Proceedings additional. — Any proceedings under this chapter are in addition to other civil or criminal remedies.

History.

I.C., § 39-6315, as added by 1988, ch. 341, § 1, p. 1013.

§ 39-6316. Law enforcement officers — Training, powers, duties. —

(1) All training provided by the peace officers standards and training academy relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) When a peace officer responds to a domestic violence call, the officer shall give a written statement to victims which alerts the victim to the availability of a shelter or other resources in the community, and give the victim a written notice provided by the Idaho state police substantially stating the following:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in magistrate court requesting an order for protection from domestic abuse which could include any of the following: (a) an order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available from the clerk of the district court. The resources available in this community for information relating to domestic violence, treatment of injuries and places of safety and shelters are: (For safety reasons, inclusion of shelter/safe house addresses is not necessary). You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than five thousand dollars (\$5,000).

(3) The peace officer shall make every effort to arrange, offer, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(4) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten (10) days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

History.

I.C., § 39-6316, as added by 1988, ch. 341, § 1, p. 1013; am. 1990, ch. 234, § 4, p. 667; am. 1992, ch. 74, § 4, p. 210; am. 2000, ch. 250, § 12, p. 702; am. 2000, ch. 469, § 100, p. 1450; am. 2006, ch. 263, § 5, p. 815.

STATUTORY NOTES

Cross References.

Peace officers standards and training council, § 19-5101 et seq.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 250, § 12, in the first paragraph of subsection (2), substituted “alerts the victim” for “alert the victim” and substituted “four thousand dollars (\$4,000)” for “three thousand dollars (\$3,000)” at the end of subsection (2).

The 2000 amendment, by ch. 469, § 100, in the first paragraph of subsection (2), substituted “Idaho state police” for “department of law enforcement” and substituted “is not necessary” for “are not necessary” within the parenthetical phrase in the second paragraph of subsection (2).

The 2006 amendment, by ch. 263, substituted “five thousand dollars (\$5,000)” for “four thousand dollars (\$4,000)” at the end of the sample notice in subsection (2).

Compiler’s Notes.

The amendment by S.L. 2000, ch. 250, § 12, applies to all actions filed on and after January 1, 2001, pursuant to S.L. 2000, ch. 250, § 13.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-6317. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 39-6317, as added by 1988, ch. 341, § 1, p. 1013.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1988, ch. 341, which is codified as §§ 39-6301 to 39-6306 and 39-6307 to 39-6317.

§ 39-6318. Order for transfer of wireless telephone service. — (1) In order to ensure that a requesting party can maintain an existing wireless telephone number and the wireless numbers of any minor children in the care of the requesting party, a court may issue an order, after notice and a hearing, directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the requesting party, if the requesting party is not the account holder.

(2)(a) The order transferring billing responsibility for and rights to the wireless telephone number or numbers to a requesting party shall be a separate order that is directed to the wireless telephone service provider. The order shall list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers will be transferred and each telephone number to be transferred to that person. The court shall ensure that the contact information of the requesting party is not provided to the account holder.

(b) The order shall be served on the wireless service provider's agent for service of process listed with the secretary of state.

(c) Where the wireless service provider cannot operationally or technically effectuate the order due to certain circumstances including, but not limited to, any of the following, the wireless service provider shall notify the requesting party when:

- (i) The account holder has already terminated the account;
- (ii) Differences in network technology prevent the functionality of a device on the network; or
- (iii) There are geographic or other limitations on network or service availability.

(3)(a) Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers to a requesting party, pursuant to subsection (2) of this section, by a wireless telephone service provider, the requesting party shall assume all financial responsibility for the

transferred wireless telephone number or numbers, monthly service costs and costs for any mobile device associated with the wireless telephone number or numbers.

(b) This section shall not preclude a wireless service provider from applying any routine and customary requirements for account establishment to the requesting party as part of this transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers including, but not limited to, identification, financial information and customer preferences.

(4) This section shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.

(5) No cause of action shall lie against any wireless telephone service provider, its officers, employees or agents for actions taken in accordance with the terms of a court order issued pursuant to the provisions of this section.

History.

I.C., § 39-6318, as added by 2018, ch. 227, § 2, p. 518.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2018, ch. 227 provided: “Legislative Intent. It is the intent of the Legislature to allow a victim of domestic violence to retain the use of an existing wireless telephone number and access to the contacts and other information that may be contained in an existing wireless telephone. For many victims of domestic violence, a wireless telephone is a lifeline to the community resources, the life-saving services and the support networks victims need in order to leave a batterer and an abusive environment. Many victims require access to a wireless telephone to obtain counseling services and legal assistance, such as securing a protection order. For these victims, a wireless telephone serves as a critical tool for making appointments and communicating with advocates. This can be a problem if the domestic violence victim is not the account holder for the wireless telephone, as only

an account holder has the authority to release the telephone number or numbers contained in the account.”

Chapter 64
CLEAN LAKES ACT

Sec.

39-6401 — 39-6413. [Repealed.]

Idaho Code § 39-6401

§ 39-6401. Legislative intent. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6401, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6402

§ 39-6402. Definitions. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6402, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6403

§ 39-6403. Declaration of policies and purposes. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6403, as added by 1989, ch. 383, § 1, p. 953.

§ 39-6404. Establishment of a regional clean lakes coordinating council. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6404, as added by 1989, ch. 383, § 1, p. 953; am. 2001, ch. 103, § 55, p. 253.

Idaho Code § 39-6405

§ 39-6405. Membership. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6405, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6406

§ 39-6406. Public advisory committee. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6406, as added by 1989, ch. 383, § 1, p. 953.

§ 39-6407. Technical advisory group. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6407, as added by 1989, ch. 383, § 1, p. 953; am. 2001, ch. 103, § 56, p. 253.

STATUTORY NOTES

Compiler's Notes.

S.L. 2010, ch. 279, § 1 purported to amend this section. However, S.L. 2010, ch. 59, § 1 repealed §§ 39-6401 through 39-6413. Therefore, the amendment of this section was not compiled.

Idaho Code § 39-6408

§ 39-6408. Duties of the regional council. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6408, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6409

§ 39-6409. Responsibilities. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6409, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6410

§ 39-6410. Lake management plans. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6410, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code § 39-6411

§ 39-6411. Moneys. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6411, as added by 1989, ch. 383, § 1, p. 953.

§ 39-6412. Organization. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6412, as added by 1989, ch. 383, § 1, p. 953; am. 1993, ch. 387, § 8, p. 1417.

Idaho Code § 39-6413

§ 39-6413. Quorum. [Repealed.]

Repealed by S.L. 2010, ch. 59, § 1, effective July 1, 2010.

History.

I.C., § 39-6413, as added by 1989, ch. 383, § 1, p. 953.

Idaho Code Ch. 65

• [Title 39](#)», « [Ch. 65](#) »

Chapter 65

WASTE TIRE DISPOSAL

Sec.

39-6501. Definitions.

39-6502. Waste tire storage sites.

39-6503. Waste tire disposal.

39-6504. Transport of waste tires.

39-6505. Prohibited acts.

39-6506. Recycling and reuse of waste tires.

39-6507. Penalties.

39-6508. Purpose.

§ 39-6501. Definitions. — As used in this chapter:

- (1) “City” means the city where the waste tire storage site is located.
- (2) “County” means the county where the waste tire storage site is located.
- (3) “Department” means the department of environmental quality.
- (4) “Dispose” means to drop, deposit, dump, spill or permanently place any waste tire onto or under the ground or into the waters of this state, or to own or control property where waste tires are dropped, deposited, dumped, spilled or permanently placed onto or under the ground or into the waters of this state.
- (5) “Existing waste tire storage site” means any property storing waste tires prior to recycle, reuse, or final disposal as of July 1, 2003, regardless of whether the owner or operator possesses a permit or other written city or county authorization authorizing the storage of waste tires at the property.
- (6) “Mining waste tire” means a waste tire which is greater than fifty-four (54) inches in diameter which was used in mining operations. Mining waste tires may be disposed of by burial. The department of lands shall prepare guidelines to govern the burial of mining waste tires.
- (7) “Motor vehicle” means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include bicycles.
- (8) “New waste tire storage site” means any property that is not storing waste tires as of July 1, 2003, and applies for and receives a permit or other written city or county authorization to store waste tires prior to recycle, reuse or final disposal on or after July 1, 2003.
- (9) “Operator” means any person presently, or who was during any period of waste tire storage or disposal, in control of, or having responsibility for a waste tire storage site or a waste tire disposal site.

(10) “Owner” means a person who owned a waste tire storage site or disposal site at any time waste tires are stored or disposed at the property, and the current owner of the waste tire storage site or waste tire disposal site.

(11) “Person” means an individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties.

(12) “Retail tire dealer” means any person actively engaged in the business of selling new, used, or retread replacement tires at the retail level.

(13) “Store” or “storage” means to accumulate more than two hundred (200) waste tires at any time, in a manner that does not constitute final disposal at a waste tire disposal site, or to own or control property on which more than two hundred (200) waste tires accumulate at any given time, in a manner that does not constitute final disposal at a waste tire disposal site. The following activities shall not constitute “storing” or “storage” of waste tires:

(a) A retail tire dealer collecting less than one thousand five hundred (1,500) waste tires at any point in time for each retail business location.

(b) A tire retreader collecting less than three thousand (3,000) waste tires at any point in time for each individual retread operation so long as the waste tires are of the type the retreader is actively retreading.

(c) A wrecking salvage business collecting less than one thousand five hundred (1,500) waste tires for each retail business location.

(d) A waste tire disposal site collecting waste tires for disposal at the site in accordance with the site’s approved operating plan.

(e) A wholesale tire dealer collecting less than one thousand five hundred (1,500) waste tires at any point in time for each wholesale business location.

(f) An approved solid waste transfer station or solid waste landfill collecting less than one thousand five hundred (1,500) waste tires prior to

transfer to an approved waste tire storage or disposal site.

(g) A farm or livestock operation which utilizes waste tires to secure farm or livestock silage or wastes provided the total number of waste tires shall not exceed one thousand five hundred (1,500).

(h) A permitted facility storing tires for an approved beneficial use.

(14) “Tire” has the meaning provided in [section 49-121, Idaho Code](#).

(15) “Tire retreader” means any person actively engaged in the business of retreading tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(16) “Transport” or “transporting” means picking up or hauling waste tires.

(17) “Waste tire” means a motor vehicle tire originally used for operation of a vehicle on a public roadway which is no longer suitable for its original intended purpose because of wear, damage or defect.

(18) “Waste tire storage site” means a new or existing waste tire storage site.

(19) “Waste tire disposal site” means a public or private municipal solid waste landfill operating in compliance with [section 39-6503, Idaho Code](#).

(20) “Wholesale tire dealer” means any person engaged in the business of selling new replacement tires to tire retailers.

(21) “Wrecking salvage business” means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

History.

[I.C., § 39-6501](#), as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 1, p. 1372; am. 2001, ch. 103, § 57, p. 253; am. 2003, ch. 281, § 1, p. 758.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-101 et seq.

Department of lands, § 58-101 et seq.

§ 39-6502. Waste tire storage sites. — (1) No person shall store waste tires on any public or private property in this state or in the waters of this state unless the property is a waste tire storage site as defined or otherwise exempted in this chapter.

(2) Permit or local authorization required. No person shall own or operate a waste tire storage site without a permit or other written county or city authorization, as follows:

(a) Counties and cities shall only issue permits or other written authorizations that contain terms and conditions that assure waste tire storage sites are operated in compliance with this chapter and any additional requirements the county or city deems appropriate. Counties and cities shall review waste tire storage site applications pursuant to the procedures contained in [section 67-6512, Idaho Code](#).

(b) Existing waste tire storage sites.

(i) Within three (3) months of the effective date of this chapter, the owner or operator of an existing site that is:

1. Operating without a permit or other written local authorization on the effective date of this chapter, shall apply to the respective county or city jurisdiction for approval to operate the existing site via an approved permit or other written city or county authorization; or

2. Operating with a previously issued permit or other written city or county authorization on the effective date of this chapter, shall notify the respective county or city jurisdiction.

(ii) If an existing waste tire storage facility fails to submit to the county or city an application by October 1, 2003, the existing waste tire storage site shall cease storing waste tires by January 1, 2004.

(iii) If the county or city determines not to issue a permit, other written authorization, or a modification to an existing permit or approval, for the existing waste tire storage site, the existing waste tire storage site shall cease storing waste tires no later than three (3) months after

receiving notice of the determination not to issue a permit, other written authorization, or modification for the site.

(c) New waste tire storage sites. The current owner or operator of a new waste tire storage site shall not commence waste tire storage at the site until the county or city issues a permit or other written authorization permitting waste tire storage.

(d) Counties and cities shall issue permits and other written local authorizations for waste tire storage sites.

Upon written request from the city council or board of county commissioners to the department, the department shall be responsible for the permitting and authorization requirements of this section with respect to any application submitted to the county or city, in lieu of the county or city.

(e) Financial assurance. The owner or operator of a waste tire storage site shall maintain financial assurance in the form of a cash bond payable to the county or city, in an amount acceptable to the county or city where the waste tire storage site is located; provided however, counties and cities shall require a minimum initial financial assurance of two dollars and fifty cents (\$2.50) per tire authorized to be stored at the site. The amount of financial assurance shall be adjusted each year in accordance with the consumer price index on the anniversary date of the issuance of the permit or other city or county written authorization. Failure to adjust the amount of financial assurance on the anniversary date each year shall constitute failure to comply with the provisions of this chapter and shall result in automatic revocation of the permit or other written city or county authorization and forfeiture of the bond. Cities and counties shall only process an application submitted under this section when documentation submitted with the application establishes compliance with the financial assurance requirement of this paragraph.

(i) The current owner or operator of an existing waste tire storage site shall comply with the financial assurance requirement of this paragraph by October 1, 2003. Except that the owner or operator of the existing waste tire storage site located in the magic valley as provided by rule of the department shall comply with the financial assurance requirement of this paragraph by July 1, 2005.

(ii) The current owner or operator of a new waste tire storage site shall comply with the financial assurance requirement of this section prior to commencing waste tire storage at the site.

Upon written request from the city council or board of county commissioners to the department, the cash bond will be written in favor of the department, in lieu of the city or county. In such cases, the department will oversee use of the bond should two (2) owners or operators become liable on the bond obligation.

(f) Siting. Counties and cities shall only issue a permit or written authorization to a waste tire storage site when the application establishes that the proposed or existing site is located on property owned as exclusively for industrial use.

(g) Application processing fee. Counties and cities may charge a fee for processing a waste tire storage site permit or authorization application or renewal.

(h) Records. Owners and operators of a waste tire storage site shall record and maintain on-site for a period of three (3) years, operational records including, but not limited to, the daily quantity of tires transported to and from the site, and the estimated quantity of tires located at the site.

(i) Suspension, revocation, renewal of permit or written authorization. The county or city may suspend, revoke, or refuse to renew a waste tire storage site's permit or written authorization if the county or city determines that the site is operating in violation of any requirement of this section or any term or condition of the site's permit or written authorization.

(3) In the event the current owner or operator of an existing or new waste tire storage site fails to comply with the requirements of this section, the board of county commissioners or city council may declare the site a public nuisance; and may declare a public health or safety emergency based on potential fire hazard, threat of insect borne disease, or potential contamination of the state's ground or surface waters. If the respective governing authority has declared a public health or safety emergency, they may petition the board of examiners for, and the board of examiners may

authorize, the issuance of deficiency warrants for the purpose of removing and properly disposing of the tires upon the recommendation of the state fire marshal in the event of fire hazard, or the district health department in the event of insect borne disease hazard, or the department in the event of ground or surface water contamination hazard.

(a) Upon authorization of deficiency warrants by the board of examiners in accordance with provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general fund.

(b) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

(c) The attorney general shall act to fully recover all costs incurred by the state of Idaho and its political subdivisions pursuant to this section.

History.

I.C., § 39-6502, as added by 2003, ch. 281, § 3, p. 758.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1001 et seq.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1401 et seq.

State fire marshal, § 41-254.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 39-6502, which comprised **I.C., § 39-6502**, as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 2, p. 1372, was repealed by § 2 of S.L. 1991, ch. 308, as amended by § 8 of S.L. 1993, ch. 375, effective July 1, 1996.

Compiler's Notes.

The phrase “the effective date of this chapter” in paragraph (2)(b) refers to the effective date of S.L. 2003, ch. 281, which was July 1, 2003.

§ 39-6503. Waste tire disposal. — (1) No person shall dispose of waste tires on any public or private property in this state or in the waters of this state except at permitted public or private municipal solid waste landfills which have been approved to accept waste tires in their operating plans as specified in the following subsection.

(2) Waste tires may be disposed at a permitted public or private municipal solid waste landfill with an approved operating plan only if the waste tires have been processed to meet the following criteria:

(a) The volume of one hundred (100) unprepared randomly selected whole tires in one (1) continuous test period must be reduced by at least sixty-five percent (65%) of the original volume as specified in subsection (3) of this section. No single void space greater than one hundred twenty-five (125) cubic inches may remain in the randomly placed processed tires; or

(b) The tires shall be reduced to an average chip size no greater than sixty-four (64) square inches in any randomly selected sample of ten (10) tires or more. No more than forty percent (40%) of the chips may exceed sixty-four (64) square inches.

(3) Tire volumes shall be calculated as follows:

(a) Unprocessed whole tire volume shall be calculated by randomly placing one hundred (100) unprepared randomly selected whole tires in a rectangular container and multiplying the depth of unprocessed tires by the bottom area of the container.

(b) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

History.

I.C., § 39-6503, as added by 2003, ch. 281, § 4, p. 758.

STATUTORY NOTES

Prior Laws.

Former § 39-6503, comprising **I.C., § 39-6503**, as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 3, p. 1372; am. 2001, ch. 103, § 58, p. 253, was repealed by S.L. 2003, ch. 281, § 2, p. 758.

§ 39-6504. Transport of waste tires. — (1) No person shall transport waste tires for storage to any location in this state other than to a waste tire storage site for which a city or county has issued a permit or other written county or city authorization in active status.

(2) No person shall transport waste tires for disposal to any location in this state other than to a municipal solid waste landfill which is operating in compliance with the requirements of [section 39-6503, Idaho Code](#).

(3) Nothing in this section shall prohibit any person from transporting waste tires to facilities in the state which possess a valid air quality permit, provided the permit allows for an approved beneficial use of the waste tires.

History.

[I.C., § 39-6504](#), as added by 2003, ch. 281, § 5, p. 758.

STATUTORY NOTES

Prior Laws.

Former § 39-6504, comprising [I.C., § 39-6504](#), as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 4, p. 1372; am. 2001, ch. 103, § 59, p. 253 was repealed by S.L. 2003, ch. 281, § 2, p. 758.

§ 39-6505. Prohibited acts. — No person shall advertise or represent himself/herself as being in the business of accepting waste tires for transport, storage, or disposal without being in full compliance with all the provisions of this chapter.

History.

I.C., § 39-6505, as added by 2003, ch. 281, § 6, p. 758.

STATUTORY NOTES

Prior Laws.

Former § 39-6505, which comprised **I.C., § 39-6505**, as added by S.L. 1991, ch. 308, § 1, p. 808 as amended by S.L. 1993, ch. 375, § 5, p. 1372 and was repealed by S.L. 1991, ch. 308, §§ 2 and 3.

§ 39-6506. Recycling and reuse of waste tires. — The state of Idaho seeks to protect human health and the environment by encouraging the recycling and reuse of waste tires. Accordingly, the legislature directs the department to identify approved methods of recycling and reuse of waste tires.

History.

I.C., § 39-6506, as added by 2003, ch. 281, § 7, p. 758.

STATUTORY NOTES

Prior Laws.

Former § 39-6506, comprising **I.C., § 39-6506**, as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 6, p. 1372; am. 2001, ch. 103, § 60, p. 253, was repealed by S.L. 2003, ch. 281, § 2, p. 758.

§ 39-6507. Penalties. — Any person who knowingly stores, transports or disposes of a tire in violation of the provisions of this chapter is subject to a civil penalty of not more than five hundred dollars (\$500) per violation and is subject to the provisions of the environmental protection and health act contained in [section 39-108, Idaho Code](#). Each tire so disposed of improperly constitutes a separate violation.

History.

[I.C., § 39-6507](#), as added by 1991, ch. 308, § 1, p. 808; am. 1993, ch. 375, § 7, p. 1372; am. 2003, ch. 281, § 8, p. 758.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 1991, ch. 308 as amended by § 8 of S.L. 1993, ch. 375 read: "Section 1 of this act shall be in full force and effect on and after July 1, 1991. Section 2 of this act shall be in full force and effect on and after July 1, 1996. Any moneys in the Waste Tire Grant Account which are unexpended or unencumbered on June 30, 1996, shall be transmitted to the state highway account."

§ 39-6508. Purpose. — The state of Idaho supports and encourages the reuse and recycling of waste tires. The legislature finds the paramount public interest in regulating waste tires is to protect public health and safety. In particular, the legislature is concerned with eliminating potential fire hazards; minimizing or eliminating potential breeding grounds for disease-bearing insects; and eliminating potential sources of surface and ground water contamination.

History.

I.C., § 39-6508, as added by 2003, ch. 281, § 9, p. 758.

Chapter 66
BIG PAYETTE LAKE WATER QUALITY ACT

Sec.

- 39-6601. Legislative intent.
- 39-6602. Definitions.
- 39-6603. Establishment of the Big Payette Lake water quality council.
- 39-6604. Declaration of policies and purposes.
- 39-6605. Membership.
- 39-6606. Duties of council.
- 39-6607. Organization.
- 39-6608. Quorum.
- 39-6609. Technical committee.
- 39-6610. Citizens committee.
- 39-6611. Lake management plan.
- 39-6612. Accounts.

§ 39-6601. Legislative intent. — The legislature finds that the waters of Big Payette Lake and its watershed are threatened with deterioration due to expanding residential development, greater public use and growing land use activities, that these pressures may endanger the drinkability, economic potential, fisheries, natural beauty, recreational use, swimability and wildlife values of the lake; that the state holds all such public lakes in trust for the use of all its citizens; that to preserve and protect such public lakes and to increase and enhance the use and enjoyment of such lakes is in the best interest of all the citizens of the state; that natural lakes form an important basis of the state's economy and that the increasing demand upon the lake waters of this state require coordinated state and local action to protect, preserve and improve the water qualify [quality] of the lakes.

The legislature declares that it is necessary to embark upon a program of water quality protection for the lake so that future generations of Idahoans may use and enjoy it. This act creates a program to protect, preserve and, where necessary, improve the water quality of the lake while accommodating private, public and commercial activities to the extent prudent and practicable. The program as set forth in this act shall require a working partnership of federal, state and local agencies.

History.

I.C., § 39-6601, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of the first paragraph was added by the compiler to supply the probable intended word.

The term "this act" refers to S.L. 1993, ch. 200, which is codified as §§ 39-6601 to 39-6612.

§ 39-6602. Definitions. — Whenever used in this chapter:

(1) “Citizens committee” means the committee named by the council consisting of members of the public.

(2) “Council” means the “Big Payette Lake Water Quality Council” established in this chapter.

(3) “Lake” means the Big Payette Lake and its watershed which shall include all tributaries, and small lakes on those tributaries, to the North Fork of the Payette River above Big Payette Lake. The term “lake” shall also include all tributaries, and small lakes on those tributaries, that drain directly into Big Payette Lake before the dam on the North Fork of the Payette Lake as it leaves Big Payette Lake.

(4) “Plan” means the comprehensive water quality management plan for the lake to be developed after the initial study, and as modified over time.

(5) “Pollution” means water pollution as defined in [section 39-103, Idaho Code](#).

(6) “Program” means all the actions to be performed by the council pursuant to this chapter.

(7) “Study” means the comprehensive, scientifically-based study of water quality in the lake.

(8) “Technical committee” means the advisory committee named by the council pursuant to this chapter.

History.

[I.C., § 39-6602](#), as added by 1993, ch. 200, § 1, p. 550.

§ 39-6603. Establishment of the Big Payette Lake water quality council. — There is hereby created a Big Payette Lake water quality council for the lake. It shall be the responsibility of the council to develop and implement the program created in this chapter. The council shall be assisted in carrying out its responsibilities by the department of environmental quality, the local public health district and other appropriate state and local agencies as needed.

History.

I.C., § 39-6603, as added by 1993, ch. 200, § 1, p. 550; am. 2001, ch. 103, § 61, p. 253.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-101 et seq.

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6604. Declaration of policies and purposes. — The council shall develop and implement a program that includes:

(1) The assembly of all historical data on water quality studies in the lake.

(2) An assessment of present and projected land and water uses related to the lake.

(3) The performance of a comprehensive, scientifically-based study of water quality in the lake. This study will include, but not be limited to, all point and nonpoint sources of nutrients, bacteria, sediments and potential pollution.

(4) The continued collection of important data after the initial study is completed as required by and for use in a nutrient load/lake response predictive model which shall be developed as part of the initial study.

(5) The preparation of a water quality management plan upon completion of the initial study, such plan to be updated regularly as new knowledge becomes available.

(6) The submittal of such plan to the legislature which shall accept, modify or reject the plan. The council will assist and coordinate the implementation of the accepted plan with federal, state and local authorities for seven (7) years after acceptance, after which the council and its committees will disband and be succeeded by appropriate multiagency oversight of the plan, its modification, and maintenance of the nutrient load/lake response predictive model. The city council of McCall and the Valley county commission may establish appropriate public committees to advise in matters related to the implementation of the plan on a continuing basis.

(7) An active public participation program with stakeholders and other interested parties in the design of the study, and the preparation and implementation of the plan, from the beginning of the council's activities and until its disbandment. This program shall include regular reports to the public through forums, printed material and otherwise of lake conditions,

findings of the study and progress in the development and implementation of the plan.

History.

I.C., § 39-6604, as added by 1993, ch. 200, § 1, p. 550; am. 2000, ch. 27, § 1, p. 52.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6605. Membership. — The council shall consist of nine (9) members appointed by the governor. The governor shall appoint one (1) member who shall be a Valley county commissioner at the time of their appointment, one (1) member who shall be an elected member of the McCall city government at the time of their appointment, one (1) local resident to represent sporting interests in the area, one (1) member to represent lumbering interests in the watershed, one (1) member to represent commercial interests in Valley county, and four (4) members at large who are full or part-time residents of Valley county. The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the appointment. Vacancies shall be filled by appointment of the governor upon recommendation of the council. A majority of the members of the council must maintain their primary residence in Valley county. Once established, the council will convene to adopt rules for its operation.

History.

I.C., § 39-6605, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6606. Duties of council. — The council shall have the following duties:

(1) To coordinate activities related to the study of water quality in the lake, the development of a water quality management plan, and the implementation of that plan until disbandment as provided herein.

(2) To conduct a public awareness program to educate the general public on methods and responsibilities to protect the lake.

(3) To make an examination, as the council deems necessary, of environmental conditions in, upon and around the lake. The objective shall be to obtain a scientifically sound baseline study for planning future action by appropriate authorities.

(4) To undertake and complete a management plan with recommendations for the lake based upon such examination and study. The plan to be prepared shall specifically identify and address lake protection concerns upon the lake and within the surrounding watershed where land use, scenic values, water uses, residential development, wildlife habitat, fisheries, industry, commerce and other forms of human activity are both influenced by the lake and may reasonably be expected to significantly impact the water quality of the lake.

(5) To promote, until disbandment, the implementation of the plan by serving in an advisory capacity to those city, planning and zoning, county, state and federal authorities with responsibilities affecting lake management or lake water quality. The council may recommend, as appropriate, the adoption of any statutes, ordinances, rules and regulations needed to implement the plan.

(6) To consult with the public and keep the public informed through public forums and written reports of all activities of the council.

(7) The duties of the council are ongoing and continuous until its disbandment. The council shall have the authority to complete the examination and study and prepare the plan complete with recommendations for the lake and its tributaries.

(8) The council and all its committees will automatically disband seven (7) years after the plan, as and/or if, modified, is adopted by the legislature. Before disbandment, the council shall assist local, city, state and federal authorities in the establishment of a multiagency oversight capability to succeed the council.

(9) The council shall not have any regulatory or enforcement powers.

History.

I.C., § 39-6606, as added by 1993, ch. 200, § 1, p. 550; am. 2000, ch. 27, § 2, p. 52.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6607. Organization. — (1) After appointment, the members of the council shall choose one (1) member as chairman of the council and shall elect a secretary and treasurer of the council who may or may not be members of the council. The secretary and the treasurer may be one (1) person. The secretary shall keep a record of all council proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection to all interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the council in permanent records. The treasurer shall prepare or cause to be prepared annual financial statements on a fiscal year basis ending June 30 of each year. Such financial statements shall be available for inspection by any citizen.

(3) Members of the council shall serve without compensation. No member shall receive any compensation as an employee of the council or otherwise, other than herein provided, and no member of the council shall be interested in any contract or transaction with the council except in his official representative capacity.

(4) It shall be the duty of the council to cause an audit to be made of all financial affairs of the council during each year ending June 30. A financial statement shall be certified by the person making such audit.

History.

I.C., § 39-6607, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6608. Quorum. — (1) A majority of the members of the council shall constitute a quorum for the transaction of business. A majority vote of the members present shall be required to take action with respect to any matter. The vote of each member shall be individually recorded.

(2) The council may in other respects adopt its own operating procedures, which procedures shall be made available for public review.

History.

I.C., § 39-6608, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6609. Technical committee. — To assist in the development of its program, the council shall create a technical committee which may include, but is not exclusively limited to, designated representatives of the public health district, city and county planning or engineering departments, the county planning and zoning commission, the McCall water and sewer district, department of environmental quality, department of lands, department of fish and game, department of parks and recreation, department of water resources, state soil and water conservation commission, United States forest service, United States army corps of engineers, United States agricultural conservation and stabilization services, United States natural resources conservation service, United States geological survey, United States environmental protection agency and representatives proposed by interests in agriculture, environmental protection, forest products, sporting and mining. Indian tribes may nominate a representative for the technical committee. Members shall serve without state compensation except such normal compensation received by members who are state, city, county, district or federal employees serving in the normal course and scope of their employment.

History.

I.C., § 39-6609, as added by 1993, ch. 200, § 1, p. 550; am. 2001, ch. 103, § 62, p. 253; am. 2010, ch. 279, § 27, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the first sentence, substituted “state soil and water conservation commission” for “state soil conservation commission” and substituted “United States natural resources conservation service” for “United States soil conservation service.”

Compiler’s Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6610. Citizens committee. — The council shall create a citizens committee comprised of citizens who express an interest in the council's program for the lake, the study and the plan. Citizens performing volunteer services in support of the council's program shall be automatic members of the citizens committee. Members of the citizens committee may meet with the council with full right to participate in all proceedings and discussions except that citizen committee members shall not be voting members.

History.

I.C., § 39-6610, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

§ 39-6611. Lake management plan. — (1) When the council has received and accepted the study, it shall make the same available to all appropriate and interested city, county, health district, state and federal agencies and to any interested individual or affected lake agency or association. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the lake management plan or recommendations to the council.

(2) The council shall thereafter prepare a lake management plan and recommendations which shall be completed within one hundred eighty (180) days after dissemination of the examination and baseline study.

(3) The council shall identify sources and types of pollution within the planning area and identify existing and potential programs and measures by which this pollution might be abated, and summarize the past successes of these efforts, including notable voids in funding, regulatory powers or interagency coordination.

(4) The council shall identify present and future water and land uses within the watershed and comment on the implication of these various uses on the lake.

(5) Once completed, the council shall provide copies of its plan and recommendations to all agencies, persons and associations who have indicated an interest in the examination and baseline study. The council shall thereupon provide for one (1) or more public hearings upon its lake management plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(6) After receiving the information obtained at the public hearing(s), the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(7) The legislature shall, within the next regular session during or after which it receives the plan, accept, reject or modify the plan. Such accepted or modified plan shall have the force and effect of law.

(8) Thereafter, the council shall assist public and governmental authorities to adopt and enforce the provisions of the plan for which that authority has a responsibility. Before its disbandment, the council shall also assist these authorities to establish an ongoing joint-agency oversight responsibility for the plan and its recommendations.

History.

I.C., § 39-6611, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

§ 39-6612. Accounts. — (1) There is hereby created in the state treasury a dedicated fund known as the Payette Lake trust account. Moneys in the Payette Lake trust account may come from appropriations, grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the account shall be exclusively for the development and implementation of the program. Moneys in the account may only be expended pursuant to appropriation, and then only as authorized by a resolution duly adopted by a majority of the council.

(2) There is hereby created in the state treasury a dedicated fund known as the Big Payette Lake water quality council administrative account. All money in the account is to be derived exclusively from private, nongovernmental funding sources. All money in the account is appropriated continuously to the council to be used exclusively to defray the costs of council administration. The account shall not be subject to the provisions of the standard appropriations act of 1945.

History.

I.C., § 39-6612, as added by 1993, ch. 200, § 1, p. 550.

STATUTORY NOTES

Cross References.

Standard appropriations act of 1945, § 67-3601 et seq.

Compiler's Notes.

The Big Payette Lake water quality council disbanded in March 2005 and was replaced by the Big Payette waterside advisory group, a committee of agencies and citizens overseen by the department of environmental quality.

Effective Dates.

Section 2 of S.L. 1993, ch. 200 declared an emergency. Approved March 26, 1993.

Chapter 67
TREASURE VALLEY AND REGIONAL AIR QUALITY
COUNCIL ACT

Sec.

- 39-6701. Legislative statement of findings and intent.
- 39-6702. Establishment of the Treasure Valley air quality council.
- 39-6703. Establishment of a regional air quality council — Petition.
- 39-6704. Establishment of a citizens committee.
- 39-6705. Definitions.
- 39-6706. Declaration of policies and purposes.
- 39-6707. Membership of the Treasure Valley air quality council.
- 39-6708. Membership of a regional air quality council.
- 39-6709. Duties of the Treasure Valley air quality council and any regional air quality council — Powers.
- 39-6710. Quorum — Procedures.
- 39-6711. Treasure Valley air quality plan.
- 39-6712. Implementation of the Treasure Valley air quality plan.
- 39-6713. Treasure Valley air quality trust fund.
- 39-6714. Air quality plan of a regional air quality council.
- 39-6715. Implementation of a regional air quality plan.
- 39-6716. Regional fund.
- 39-6717. Savings clause.

§ 39-6701. Legislative statement of findings and intent. — (1) The legislature finds that the air quality in certain regions of the state is threatened with deterioration. This deterioration may endanger the breathability, economic potential, public health, natural beauty, recreational use and livability in various regions of the state. It is the intent of the legislature in establishing this chapter to preserve and protect the air quality of the entire state.

(2) The legislature declares that it is necessary to embark upon a program of air quality protection for future generations of Idahoans. This chapter establishes a treasure valley air quality council and also allows for the creation of regional air quality councils as necessary to protect, preserve and, where necessary, improve the quality of air in a specified geographical area while accommodating private, public and commercial activities. The plan developed by an air quality council as set forth in this chapter shall require a working partnership of state and local agencies of government as well as the private sector.

History.

I.C., § 39-6701, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6702. Establishment of the Treasure Valley air quality council.

— There is hereby established a Treasure Valley air quality council within the Idaho department of environmental quality. It shall be the responsibility of the council to develop a plan and carry out the duties established by this chapter. The council shall be assisted in its work by the department of environmental quality and other appropriate state and local agencies as needed.

History.

I.C., § 39-6702, as added by 2005, ch. 206, § 1, p. 616.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-101 et seq.

§ 39-6703. Establishment of a regional air quality council — Petition.

— (1) There is hereby authorized the establishment of regional air quality councils within the Idaho department of environmental quality.

(2) Any ten (10) persons living within the boundaries of a geographical area proposed for the establishment of a regional air quality council may file a petition with the board of environmental quality within the department of environmental quality requesting a regional air quality council be established. The petition shall set forth:

- (a) The proposed name of the regional air quality council;
- (b) The needs, in the interest of the public health, safety and welfare, for such a council;
- (c) The geographical boundaries of the territory proposed for development of a plan by a council; and
- (d) A request that the board duly define the geographic boundaries for a council.

(3) Within thirty (30) days after such petition has been filed with the board, it shall cause due notice to be given of a proposed hearing upon the petition. After such hearing, if the board determines upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is need in the interest of the public health, safety and welfare, for the establishment of a regional air quality council, it shall approve the petition and shall make and record such approval. The board shall immediately as practicable notify the governor by forwarding a copy of the board's approval to the governor. Within a reasonable time, but not to exceed ninety (90) days, the governor shall appoint members to that regional air quality council in accordance with the provisions of [section 39-6708, Idaho Code](#).

(4) It shall be the responsibility of any council established under this chapter to develop a plan and carry out the duties established by this chapter. The council shall be assisted in its work by the department of environmental quality and other appropriate state and local agencies as needed.

History.

I.C., § 39-6703, as added by 2005, ch. 206, § 1, p. 616.

STATUTORY NOTES**Cross References.**

Board of environmental quality, § 39-107.

§ 39-6704. Establishment of a citizens committee. — Each council established under the provisions of this chapter shall create a citizens committee comprised of citizens who express an interest in the council's purpose and work. Citizens performing volunteer services in support of the work of a council shall automatically be members of the citizens committee. Members of the citizens committee may meet with the council with full right to attend all proceedings and discussions and submit comments, except that citizen committee members shall not be voting members.

History.

I.C., § 39-6704, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6705. Definitions. — Whenever used in this chapter:

(1) “Air pollution” means air pollution as defined in [section 39-103, Idaho Code](#).

(2) “Air quality plan” means the comprehensive, air quality management plan for a specified regional area as developed and modified by a regional air quality council.

(3) “Citizens committee” means the committee consisting of members of the public created pursuant to [section 39-6704, Idaho Code](#), by an air quality council established under the provisions of this chapter.

(4) “Council” means a regional air quality council established pursuant to this chapter.

(5) “Local governing agency” means a county or city government agency.

(6) “Specified regional area” means a county or counties, or a defined geographical area where air quality is threatened.

(7) “Study” means the comprehensive, scientifically-based study of air quality in a specified regional area including the study of air quality in the Treasure Valley.

(8) “Treasure Valley” means the geographic boundaries encompassed by Ada and Canyon counties.

(9) “Treasure Valley air quality council” means the regional air quality council established in [section 39-6702, Idaho Code](#).

(10) “Treasure Valley air quality plan” means the comprehensive, air quality management plan for Ada and Canyon counties as developed and modified by the Treasure Valley air quality council.

History.

[I.C., § 39-6705](#), as added by 2005, ch. 206, § 1, p. 616.

§ 39-6706. Declaration of policies and purposes. — The Treasure Valley air quality council, and any regional air quality council established pursuant to this chapter, shall develop and implement an air quality plan in accordance with the environmental protection and health act, [sections 39-101 through 39-130, Idaho Code](#), that includes:

(1) The compilation of all historical data on air quality studies in the Treasure Valley, or in a specified regional area; (2) An assessment of present and projected emissions related to the Treasure Valley, or related to a specified regional area; (3) The completion of a comprehensive, scientifically-based study of air quality in the Treasure Valley, or in a specified regional area; (4) A description of actions to be taken by governmental agencies and nongovernmental entities to protect, preserve and, when necessary, improve the air quality in the Treasure Valley, or in a specified regional area; and (5) The submittal of an air quality management plan to the legislature which may reject the plan in whole or in part pursuant to a concurrent resolution. The Treasure Valley air quality council, and any regional air quality council established pursuant to this chapter, shall assist and coordinate the implementation of the accepted plan with federal, state and local authorities for seven (7) years after acceptance, after which the Treasure Valley air quality council, or any regional air quality council, and its committees shall disband.

History.

[I.C., § 39-6706](#), as added by 2005, ch. 206, § 1, p. 616.

STATUTORY NOTES

Compiler's Notes.

Pursuant to the provisions of subsection (5) of this section, the Treasure Valley air quality council has disbanded.

§ 39-6707. Membership of the Treasure Valley air quality council. —

(1) The Treasure Valley air quality council shall consist of fourteen (14) members appointed by the governor. The governor shall appoint one (1) member who shall be an Ada county commissioner; one (1) member who shall be a Canyon county commissioner; one (1) member who is an elected member of a city government in Ada county; one (1) member who is an elected member of a city government in Canyon county; two (2) members who represent agricultural interests in the Treasure Valley; two (2) members who represent commercial interests in the Treasure Valley; two (2) members from manufacturing or food processing industries located in the Treasure Valley; two (2) members from recognized Idaho environmental organizations; and two (2) members at large who are full-time residents of Ada or Canyon county.

(2) The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the original appointment.

(3) The governor shall designate one (1) member to serve as chair of the Treasure Valley air quality council.

(4) Vacancies shall be filled by appointment of the governor.

(5) All members of the Treasure Valley council shall maintain their primary residence in either Ada or Canyon county during the term of the member's appointment.

History.

I.C., § 39-6707, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6708. Membership of a regional air quality council. — (1) A council shall consist of fourteen (14) members appointed by the governor. The governor shall appoint two (2) members from each of the following categories: two (2) members who are county commissioners within the specified regional area; two (2) members who are at the time of appointment, elected members of a city government in the specified regional area; two (2) members who represent agricultural interests in the specified regional area; two (2) members who represent commercial interests in the specified regional area; two (2) members from industries located in the specified regional area; two (2) members from recognized Idaho environmental organizations; and two (2) members at large who are full-time residents of the specified regional area.

(2) The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the original appointments.

(3) The governor shall designate one (1) member to serve as chair of the council.

(4) Vacancies shall be filled by appointment of the governor.

(5) All members of a council shall maintain their primary residence in the specified regional area during the term of the member's appointment.

History.

I.C., § 39-6708, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6709. Duties of the Treasure Valley air quality council and any regional air quality council — Powers. — (1) The Treasure Valley air quality council, and any regional council established pursuant to this chapter, shall have the following duties:

(a) To coordinate activities related to the study of air quality, the development of an air quality plan for the area, and oversee the implementation of that plan.

(b) To conduct a public awareness program to educate the general public on methods and responsibilities to protect the air shed.

(c) To examine, as the Treasure Valley or regional council deems necessary, air quality conditions in, upon and around the Treasure Valley, or in, upon and around a specified regional area. The objective shall be to obtain a scientifically-sound baseline study for planning future action by appropriate federal, state and local government, and the private sectors.

(d) To promote, until dissolution, the implementation of the Treasure Valley air quality plan, or the air quality plan of a regional council, by serving in an advisory capacity to those local, state and federal government agencies with responsibilities affecting air quality. Any council may recommend, as appropriate, the adoption of any statutes, ordinances, policies and rules needed by such governmental agencies to implement the plan.

(e) To consult with the public and keep the public informed of activities of the council through public forums and written reports.

(f) To establish a citizens committee pursuant to [section 39-6704, Idaho Code](#).

(g) To perform its duties continuously until its dissolution.

(h) Prior to the automatic dissolution of the council and all its committees seven (7) years after the council's plan is adopted by the legislature, to assist local, state and federal agencies in the establishment of a multiagency oversight capability to succeed the council.

(2) A council shall not have any regulatory or enforcement powers.

History.

I.C., § 39-6709, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6710. Quorum — Procedures. — (1) A majority of the members of the Treasure Valley air quality council, or a regional council, shall constitute a quorum for the transaction of business. A majority vote of the members present shall be required to take action with respect to any matter.

(2) The Treasure Valley air quality council, or a regional council, may adopt its own operating rules and procedures which shall be made available to the public.

History.

I.C., § 39-6710, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6711. Treasure Valley air quality plan. — (1) The Treasure Valley air quality council shall complete a draft plan by July 1, 2006. It shall make the study available to all appropriate and interested local, state and federal agencies and to any interested persons. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the plan, or recommendations to the council.

(2) The council shall thereafter prepare a final Treasure Valley air quality plan which shall be completed within one hundred eighty (180) days after dissemination of the study.

(3) The council shall identify in the plan all known present and future air issues in Ada and Canyon counties.

(4) Once completed, the council shall provide copies of its plan to all agencies and persons who have indicated an interest in the study. The council shall thereupon provide for one (1) or more public hearings upon its plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(5) After receiving the information obtained at the public hearing, the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(6) The legislature may, within the next regular session during or after which it receives the plan, reject the plan in whole or in part by concurrent resolution.

(7) Thereafter, the council shall assist in the implementation of the provisions of the plan. Before its dissolution, the council shall also assist these local, state and federal agencies to establish an ongoing, joint-agency oversight responsibility for the plan.

History.

I.C., § 39-6711, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6712. Implementation of the Treasure Valley air quality plan. —
To the greatest extent practicable, all Idaho state and local government agencies shall implement the plan and its recommendations. In circumstances where any state or local government agency chooses not to so incorporate and implement any element of the plan, any such agency shall provide to the council in writing the reasons why such incorporation and implementation have not been adopted.

History.

I.C., § 39-6712, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6713. Treasure Valley air quality trust fund. — There is hereby created in the state treasury a dedicated fund known as the “Treasure Valley Air Quality Trust Fund” which shall be referred to as the Treasure Valley fund. Moneys in the Treasure Valley fund may come from grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the fund shall be used exclusively for the purpose of fulfillment of the statutorily-required duties of the Treasure Valley air quality council. Moneys in the fund may only be expended as authorized by a resolution duly adopted by a majority of the council.

History.

I.C., § 39-6713, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6714. Air quality plan of a regional air quality council. — (1) A regional air quality council shall develop and accept the study within one (1) year after establishment of the council. It shall make the study available to all appropriate and interested local, state and federal agencies and to any interested persons. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the plan, or recommendations to the council.

(2) The council shall thereafter prepare a final regional air quality plan which shall be completed within one hundred eighty (180) days after dissemination of the study.

(3) The council shall identify present and future air issues in the specified regional area.

(4) Once completed, the council shall provide copies of its plan to all agencies and persons who have indicated an interest in the study. The council shall thereupon provide for one (1) or more public hearings upon its plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(5) After receiving the information obtained at the public hearing, the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(6) The legislature shall, within the next regular session during or after which it receives the plan, accept, reject or modify the plan by concurrent resolution.

(7) Thereafter, the council shall assist in the adoption and enforcement of the provisions of the plan. Before its dissolution, the council shall also assist these local, state and federal agencies to establish an ongoing, joint-agency oversight responsibility for the plan.

History.

I.C., § 39-6714, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6715. Implementation of a regional air quality plan. — To the greatest extent practicable, all Idaho state and local government agencies shall incorporate and implement the plan and its recommendations. In circumstances where any state or local government agency chooses not to implement any element of the plan, any such agency shall provide to the council a written explanation of its failure to implement that portion of the plan.

History.

I.C., § 39-6715, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6716. Regional fund. — There is hereby created in the state treasury a dedicated fund known as the “Regional Air Quality Trust Fund” which shall be referred to as the regional fund. Moneys in the regional fund may come from grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the fund shall be used exclusively for the purpose of fulfillment of the statutorily-required duties of a regional air quality council. Moneys in the fund may only be expended as authorized by a resolution duly adopted by a majority of a council.

History.

I.C., § 39-6716, as added by 2005, ch. 206, § 1, p. 616.

§ 39-6717. Savings clause. — Nothing in this chapter shall alter or affect the provisions of [section 39-114, Idaho Code](#), on the open burning of crop residue.

History.

[I.C., § 39-6717](#), as added by 2005, ch. 206, § 1, p. 616; am. 2008, ch. 71, § 5, p. 191.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 71, substituted “section 39-114” for “chapter 48, title 22” and “on the open burning of crop residue” for “on smoke management and crop residue disposal.”

Effective Dates.

Section 6 of S.L. 2008, ch. 71 declared an emergency. Approved March 7, 2008.

Idaho Code Ch. 68, 69

• [Title 39](#)», « [Ch. 68, 69.](#)»

Chapter 68, 69 [RESERVED]

Idaho Code Ch. 70

• Title 39 », « Ch. 70 »

Chapter 70

SALE AND DISPOSAL OF BATTERIES

Sec.

39-7001. Definition of lead acid battery.

39-7002. Disposal of lead acid batteries.

39-7003. Sale of lead acid batteries — Fee — Notice.

39-7004. Penalties.

§ 39-7001. Definition of lead acid battery. — For the purpose of this chapter, “lead acid battery” means a battery with a core of elemental lead and a capacity of six (6) or more volts which is suitable for use in farm equipment, construction equipment, a motor vehicle or a boat. Batteries only suitable for motor cycles, off-road recreation vehicles or lawn and garden equipment are exempt from the fees in this chapter.

History.

I.C., § 39-7001, as added by 1991, ch. 292, § 1, p. 752.

§ 39-7002. Disposal of lead acid batteries. — (1) The disposal of lead acid batteries in landfills and the incineration of those batteries is prohibited. An owner or operator of a solid waste disposal facility shall not knowingly accept a lead acid battery for disposal unless the owner or operator is removing lead acid batteries from the waste stream for recycling. A lead acid battery shall be discarded or disposed of only as follows:

(a) A lead acid battery retailer or wholesaler may deliver a lead acid battery to any one (1) of the following:

(i) A permitted secondary lead smelter.

(ii) A battery manufacturer.

(iii) A collection or recycling facility authorized by the federal environmental protection agency or department of environmental quality.

(iv) In the case of battery retailers only, an agent of a battery wholesaler.

(v) A landfill operator who offers collection services for recycling lead acid batteries.

(2) A person other than a lead acid battery retailer or wholesaler may deliver a lead acid battery to any of the following:

(a) A lead acid battery retailer or wholesaler.

(b) A permitted secondary lead smelter.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the department of environmental quality.

(d) A landfill operator who offers collection services for recycling lead acid batteries.

History.

I.C., § 39-7002, as added by 1991, ch. 292, § 1, p. 752; am. 2001, ch. 103, § 63, p. 253.

§ 39-7003. Sale of lead acid batteries — Fee — Notice. — (1) A lead acid battery seller shall accept from customers at the point of transfer used lead acid batteries of the type and quantity sold at that point of transfer and may accept additional batteries. A lead acid battery seller shall post a written notice which is clearly visible in the public sales area of the establishment and which contains the following language:

“It is unlawful to dispose of a motor vehicle battery or other lead acid battery in a landfill or any unauthorized site.

Recycle all used batteries.”

The seller is required by law to accept used lead acid batteries. When any new lead acid battery is purchased, an additional fee of ten dollars (\$10.00) will be charged unless a used battery is returned for refund within thirty (30) days.

(2) Each person who purchases a new lead acid battery shall be assessed a fee of ten dollars (\$10.00) per battery by the seller. A seller shall refund the ten dollar (\$10.00) fee to any person who presents a used lead acid battery to the seller with a receipt for the purchase of a new battery from that seller within the thirty (30) day period immediately following the purchase. A seller may keep any lead acid battery fee moneys which are not properly claimed within thirty (30) days after the date of sale.

(3) All lead acid batteries sold after July 1, 1992, shall bear a universally accepted recycling symbol.

(4) An advertisement or other printed promotional material related to the sale of lead acid batteries shall contain the following notice in bold print:

“A fee is imposed on the purchase of each new lead acid battery unless a used battery is returned where applicable.”

(5) The provisions of this section do not apply to a person whose sales of batteries are not in the ordinary course of business.

(6) A wholesale seller of lead acid batteries who sells batteries to this state, to a political subdivision of this state or to a private entity which resells the batteries is not subject to the fees in this chapter.

(7) A person or entity who manufactures or sells equipment or vehicles, the final product of which includes a lead acid battery as a component part, is not subject to the fees in this chapter as long as the lead acid battery is attached to and is a component part of said equipment or vehicle.

History.

I.C., § 39-7003, as added by 1991, ch. 292, § 1, p. 752; am. 2009, ch. 172, § 1, p. 550.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 172, increased the fee amounts in subsections (1) and (2) from \$5 to \$10.

Effective Dates.

Section 2 of S.L. 2009, ch. 172 declared an emergency. Approved April 17, 2009.

§ 39-7004. Penalties. — (1) A person who improperly disposes of a battery in violation of the provisions of this chapter is subject to a civil penalty of not more than five hundred dollars (\$500) per violation and is subject to the penalty provisions of the environmental protection and health act contained in chapter 1, title 39, Idaho Code. Each battery which is so disposed of improperly constitutes a separate violation.

(2) A person who knowingly violates any provision of this chapter other than as described in subparagraph (1) of this section is subject to a civil penalty of not more than one hundred dollars (\$100) per violation.

History.

I.C., § 39-7004, as added by 1991, ch. 292, § 1, p. 752.

Idaho Code Ch. 71

• [Title 39](#)», « [Ch. 71](#) »

Chapter 71

HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT

Sec.

39-7101. Short title.

39-7102. Legislative findings and purposes.

39-7103. Definitions.

39-7104. Military division — Powers and duties.

39-7105. Local emergency response authorities — Designation.

39-7106. Local emergency response authorities — Powers and duties.

39-7107. State disaster preparedness act controls disaster emergencies, except for the liability of responsible persons.

39-7108. Notification of release is required.

39-7109. Right to claim reimbursement.

39-7110. Deficiency warrants for reimbursement of response costs.

39-7111. Liability for release of a hazardous substance.

39-7112. Cost recovery and civil remedies.

39-7113. Persons rendering assistance relating to hazardous substance incidents — Good samaritan limited immunity.

39-7114. Private emergency response plan approval.

39-7114A. Civil air patrol.

39-7115. Severability.

Idaho Code § 39-7101

§ 39-7101. Short title. — This chapter may be known and cited as the “Idaho Hazardous Substance Response Act.”

History.

I.C., § 39-7101, as added by 1991, ch. 242, § 1, p. 582.

§ 39-7102. Legislative findings and purposes. — (1) The legislature of the state of Idaho finds:

(a) That the state has a duty to protect the health, safety and welfare of the people of Idaho; (b) That the protection and preservation of Idaho's environment promotes the health, safety and welfare of her people; (c) That the unexpected and uncontrolled releases or threat of releases of hazardous substances constitute a threat to the people and environment of Idaho; and (d) That knowledgeable persons, governmental entities and organizations should be encouraged to lend expert assistance in the event of a hazardous substance incident.

(2) Therefore, it is hereby declared that the purposes of the provisions of this chapter are:

(a) To facilitate emergency response planning and coordination at a state and local level;

(b) To provide for the prompt response and containment of releases or threats of release of hazardous or potentially hazardous substances to include explosives and weapons of mass destruction; (c) To provide liability for emergency response costs associated with responding to hazardous substances incidents; (d) To encourage knowledgeable persons, governmental entities and organizations to lend assistance by providing them with limited immunity from civil liability; and (e) To provide a mechanism for recovery of costs incurred by the state and local governments in responding to emergency hazardous substance incidents to be used in lieu of, and not in addition to, cost recovery mechanisms or claims for relief provided by applicable federal laws. By enacting this chapter, it is the intent of the legislature that the state and local governments elect to proceed in state courts under the provisions of this chapter and other provisions of state law rather than in federal court under federal laws, where necessary to recover emergency response costs. There is no provision for cost recovery for a hazardous substance incident response occurring on private property where the owner responds to the incident with the approval of the incident commander.

History.

I.C., § 39-7102, as added by 1991, ch. 242, § 1, p. 582; am. 2009, ch. 281, § 1, p. 844.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 281, in subsections (1)(c) and (2)(b), inserted “or threats of release” or similar language; in subsection (2)(b), inserted “or potentially hazardous” and added “to include explosives and weapons of mass destruction”; and, in subsection (2)(c), inserted “responding to.”

§ 39-7103. Definitions. — As used in this chapter:

(1) “Emergency” means a release or threat of release that, in the reasonable judgment of the local emergency response authority in consultation with the office, threatens immediate harm to the environment or the health and safety of any individual and that requires immediate action for the containment or control of a hazardous or potentially hazardous substance to prevent, minimize or mitigate harm to the public health, safety or the environment which may result if action is not taken.

(2) “Hazardous substance incident” means an emergency circumstance requiring a response by the state emergency response team or the local emergency response authority to monitor, assess and evaluate a release or threat of a release of a hazardous or potentially hazardous substance. A hazardous substance incident may require containment or confinement or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has ended.

(3) “Hazardous substance” means:

(a) Any “hazardous substance” within the scope of section 101(14) of the federal comprehensive environmental response, compensation and liability act (CERCLA), [42 U.S.C. 9601\(14\)](#);

(b) Any hazardous substance within the scope of section 104 of the federal hazardous materials transportation act, [49 U.S.C. 1803](#), and the federal department of transportation regulations promulgated pursuant thereto;

(c) Any extremely hazardous substance within the scope of section 302 of the federal emergency planning and community right-to-know act, [42 U.S.C. 11002](#); and

(d) Any explosive or weapon of mass destruction utilized or threatened to be utilized in an act of terrorism, crime or other threat to public safety.

(4) “Incident commander” is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous

materials emergency incident command and response plan or the private emergency response plan.

(5) “Local emergency response authority” means those persons designated under [section 39-7105, Idaho Code](#), by the city, county, or the military division to be first responders to hazardous substance incidents.

(6) “Military division” means the military division of the office of the governor.

(7) “Office” means the Idaho office of emergency management within the military division.

(8) “Person” means any individual, public or private corporation, partnership, joint venture, association, firm, trust, estate, the United States or any department, institution, or agency thereof, the state or any department, institution, or agency thereof, any municipal corporation, county, city, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(9) “Potentially hazardous substance” means any substance which in the reasonable judgment of the local emergency response authority in consultation with the office is likely a hazardous substance.

(10) “Private emergency response plan” means a plan designed to respond to emergency releases of hazardous or potentially hazardous substances at a specific facility or under a specific set of conditions.

(11) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping or disposing of a hazardous or potentially hazardous substance, or the threat of the same, into the environment. “Release” does not include any discharge of a hazardous substance into the environment which is authorized by limits and conditions in a federal or state permit relating to the protection of public health or the environment so long as the permitted activity from which the release occurs is in compliance with applicable limits and conditions of the permit.

(12) “State emergency response team” means one (1) of the state emergency response teams authorized by the military division to respond to hazardous substance incidents.

(13) “Threat of release” means the release of a hazardous or potentially hazardous substance is likely.

History.

I.C., § 39-7103, as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 1, p. 357; am. 2004, ch. 58, § 1, p. 268; am. 2009, ch. 281, § 2, p. 844; am. 2016, ch. 118, § 3, p. 331.

STATUTORY NOTES

Cross References.

Idaho office of emergency management, § 46-1004.

Military division, § 67-802.

Amendments.

The 2009 amendment, by ch. 281, rewrote the section to the extent that a detailed comparison is impracticable, adding paragraph (4)(d) and subsections (9) and (13).

The 2016 amendment, by ch. 118, deleted former subsection (1), which read: “‘Bureau’ means the bureau of homeland security within the military division”; redesignated former subsections (2) through (7) as present subsections (1) through (6); substituted “the office” for “the bureau” in present subsections (1) and (9); and added present subsection (7).

Federal References.

The reference to 49 U.S.C. 1803 in subsection (3)(b) should have been to 49 U.S.C. App. 1803, which was repealed in 1994. See now 49 USCS § 5103.

§ 39-7104. Military division — Powers and duties. — (1) The military division through the Idaho office of emergency management shall implement the provisions of this chapter and direct the activities of its staff and, in so doing, the military division may:

- (a) Through the office, in accordance with the laws of the state, hire, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, emergency teams and committees, as may be necessary to carry out the provisions of this chapter.
- (b) Create and implement state emergency response teams that have appropriately trained personnel and necessary equipment to respond to hazardous substance incidents. The military division shall enter into a written agreement with each entity or person providing equipment or services to a designated emergency response team. The teams shall be available and may respond to hazardous substance incidents at the direction of the military division or its designee or local incident commander.
- (c) Contract with persons to meet state emergency response needs for the teams and response authorities.
- (d) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with emergency response and matters relating to and arising out of hazardous substance incidents.
- (e) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with state emergency response teams, local emergency response authorities and other interested persons.
- (f) Collect and disseminate information relating to emergency response to hazardous substance incidents.
- (g) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this chapter.

(h) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to hazardous substance incidents.

(i) Prepare, coordinate, implement and update a statewide hazardous materials incident command and response plan that coordinates state and local emergency response authorities to respond to hazardous substance incidents within the state for approval by the legislature. The plan shall address radiation, explosive and weapons of mass destruction incidents. The Idaho hazardous materials incident command and response plan shall be consistent with and a part of the Idaho state disaster plan provided in [section 46-1006, Idaho Code](#), after legislative approval.

(2) The military division shall have the powers and duties of a state emergency response commission under the federal emergency planning and community right-to-know act, [42 U.S.C. section 11001 et seq.](#)

(3) The military division may promulgate rules and procedures to govern reimbursement of claims pursuant to this chapter.

(4) All state agencies and institutions will cooperate and provide staff assistance to the military division in carrying out its duties under this chapter.

History.

[I.C., § 39-7104](#), as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 2, p. 357; am. 1998, ch. 99, § 1, p. 347; am. 2004, ch. 58, § 2, p. 268; am. 2009, ch. 281, § 3, p. 844; am. 2016, ch. 118, § 4, p. 331.

STATUTORY NOTES

Cross References.

Military division, § 67-802.

Idaho office of emergency management, § 46-1004.

Amendments.

The 2009 amendment, by ch. 281, inserted “explosive and weapons of mass destruction” in the second sentence in subsection (1)(i).

The 2016 amendment, by ch. 118, in subsection (1), substituted “Idaho office of emergency management” for “bureau of homeland security” in the introductory paragraph, and substituted “the office” for “the bureau” near the beginning of paragraph (a).

§ 39-7105. Local emergency response authorities — Designation. —

(1) It is the purpose of the provisions of this section to provide for the designation of local emergency response authorities for hazardous substance incidents.

(2) Cities and counties shall designate the local emergency response authorities for hazardous substance incidents that occur within their respective jurisdictions. Cities and counties are encouraged to appoint a response authority whose members will become trained in hazardous substance incident response.

(a) The governing body of every city shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the corporate limits of such city. A city may designate the county as its emergency response authority and participate in the county plan for hazardous substance incident response, and shall notify the county of that designation in writing.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the unincorporated area of such county.

(c) The governing body of every city and every board of county commissioners shall notify the military division and Idaho emergency medical services communications center of its designated local emergency response authority. Such notification shall be in writing and shall occur as soon as practicable, and, in any event, no later than sixty (60) calendar days after this chapter becomes effective. Thereafter, any changes in such designations shall be communicated to the military division and Idaho emergency medical services communications center no later than ten (10) working days before such change becomes effective.

(d) If no local emergency response authority having the ability to respond to a hazardous substance incident exists within a city or county or if such a political subdivision is unable to obtain the services of an emergency

response authority by way of a mutual aid agreement, contract or otherwise, such city or county may petition the military division to designate an emergency response authority to respond to hazardous substance incidents within the petitioning political subdivision's jurisdiction. The military division, in consultation with such political subdivision, may thereafter designate appropriate local emergency response authorities.

(3) If a hazardous substance incident occurs in an area in which no local emergency response authority has been designated, or if the Idaho state police has been designated as the local emergency response authority, the Idaho state police shall be the local emergency response authority for such hazardous substance incident for the purposes of this section.

History.

I.C., § 39-7105, as added by 1991, ch. 242, § 1, p. 582; am. 1995, ch. 116, § 24, p. 386; am. 1997, ch. 121, § 3, p. 357; am. 2000, ch. 469, § 101, p. 1450.

STATUTORY NOTES

Cross References.

Emergency communications commission, § 31-4815.

Idaho state police, § 67-2901 et seq.

Compiler's Notes.

The phrase "this chapter becomes effective" in paragraph (2)(c) refers to the effective date of this chapter, as enacted by S.L. 1991, ch. 242, which was April 4, 1991.

Effective Dates.

Section 30 of S.L. 1995, ch. 116 declared an emergency. Approved March 14, 1995.

§ 39-7106. Local emergency response authorities — Powers and duties. — (1) Every local emergency response authority designated in or pursuant to this chapter will respond to a hazardous substance incident occurring within its jurisdiction in a fashion consistent with the Idaho hazardous materials emergency incident command and response plan except as provided in a private emergency response plan. The local emergency response authority will also respond to a hazardous substance incident which initially occurs within its jurisdiction but which spreads to another jurisdiction. If a hazardous substance incident occurs on a boundary between two (2) jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident will perform the initial emergency response.

(2) The incident commander shall declare the hazardous substance incident ended when the threat to public health and safety has ended and the threat to the environment has been minimized.

(3) Mutual aid agreements or contracts are encouraged among governmental entities, private parties, local emergency response authorities and the military division in order to safely respond to hazardous substance incidents. Further, mutual aid agreements are encouraged among governmental entities, local emergency response authorities and the military division with other similar entities in other states and Canada in order to ensure appropriate response to hazardous substance incidents.

(4) Any local emergency response authority designated in or pursuant to the provisions of [section 39-7105, Idaho Code](#), may request the military division to provide assistance consistent with the Idaho hazardous materials emergency incident command and response plan.

History.

[I.C., § 39-7106](#), as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 4, p. 357.

§ 39-7107. State disaster preparedness act controls disaster emergencies, except for the liability of responsible persons. — In the event a disaster emergency or local disaster emergency is declared by proper authority as defined and set forth in chapter 10, title 46, Idaho Code, as a result of a hazardous substance incident, the provisions of chapter 10, title 46, Idaho Code, shall govern, except that the provisions of **section 39-7109, Idaho Code**, shall govern reimbursement of emergency response costs and the provisions of sections 39-7111 and 39-7112, Idaho Code, shall govern the liability of and cost recovery against persons responsible for hazardous substance incidents resulting in disaster emergencies in any case.

History.

I.C., § 39-7107, as added by 1991, ch. 242, § 1, p. 582.

§ 39-7108. Notification of release is required. — (1) Any person who has responsibility for reporting a release under the federal comprehensive environmental response, compensation and liability act (CERCLA), [42 U.S.C. 9603](#), shall, as soon as practicable after he has knowledge of any such reportable release other than a permitted release or as exempted in [section 39-7108\(3\), Idaho Code](#), notify the military division of such release.

(2) Any person who has responsibility for reporting a release under the federal emergency planning and community right-to-know act, [42 U.S.C. 11001 et seq.](#), shall as soon as practicable after he has knowledge of any such reportable release other than a permitted release notify the military division of such release.

(3) Any facility having a release reportable under [section 39-7108\(1\), Idaho Code](#), shall not be required to report the release to the military division if the following circumstances are met:

(a) Such release is not reportable under subsection (2) of [section 39-7108, Idaho Code](#).

(b) The facility has an approved private emergency response plan that details how such spills shall be responded to and reported.

This provision does not relieve the facility from any reporting required under other federal statutory, regulatory or other permit authorities.

(4) The military division shall immediately notify the department of environmental quality of any release reported to the military division. Such reporting to the military division shall fulfill all state reporting requirements for the department of environmental quality.

(5) Any person who does not notify the military division in accordance with the provisions of [section 39-7108, Idaho Code](#), shall be liable for a civil penalty of a sum not to exceed one thousand dollars (\$1,000) for each day the violation continues to a maximum of twenty-five thousand dollars (\$25,000).

(6) No penalty pursuant to this section shall occur if an incident occurs on private property and results in no offsite environmental damage.

History.

I.C., § 39-7108, as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 5, p. 357; am. 2001, ch. 103, § 64, p. 253.

§ 39-7109. Right to claim reimbursement. — (1) State emergency response teams and local emergency response authorities may submit claims to the military division for reimbursement of the following documented costs incurred as a result of their response to a hazardous substance incident:

- (a) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response;
- (b) Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent full-time and other than full-time employees, recalled personnel or responding when out of jurisdiction);
- (c) Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment);
- (d) Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response);
- (e) Decontamination of equipment contaminated during the response;
- (f) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of local and state personnel to recover the costs of response and of technical experts/specialists not otherwise provided for by the local government);
- (g) Medical monitoring or treatment of response personnel;
- (h) Laboratory costs for purposes of analyzing samples taken during the response; and
- (i) Disposal costs. Such costs may be reimbursed as provided in this chapter.

Reimbursement for the costs identified in paragraphs (a) through (c) of this subsection will not exceed the duration of the response.

(2) A private person, who is not a part of the state emergency response team or a local emergency response authority and is not liable under [section 39-7111, Idaho Code](#), may submit a claim to the military division for costs identified in [section 39-7109, Idaho Code](#), if their response was requested by the incident commander.

(3) Claims for reimbursement shall be submitted to the military division within sixty (60) days after termination of the hazardous substance incident for the state's determination of payment, if any.

(4) Reimbursements shall only be paid after the military division finds that the actions by the state emergency response team or the local emergency response authority were taken in response to a hazardous substance incident as defined in this chapter.

(5) The state of Idaho shall be subrogated to the rights of any such person so reimbursed to the extent of such reimbursement.

History.

[I.C., § 39-7109](#), as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 6, p. 357; am. 2009, ch. 281, § 4, p. 844.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 281, in the introductory paragraph in subsection (1), deleted “and containment of” following “their response to”; and, in subsection (1)(f), inserted “local and state personnel to recover the costs of response and of.”

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-7110. Deficiency warrants for reimbursement of response costs.

— (1) The military division shall review all claims for reimbursement and make recommendations as to payment or nonpayment of the claims to the board of examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken pursuant to this chapter. The costs associated with routine firefighting procedures shall not be reimbursable costs under this chapter.

(2) Deficiency warrants authorized by the board of examiners shall not exceed the sum of one hundred thousand dollars (\$100,000) for reimbursement of all claims made as a result of a single hazardous substance incident. In the event all claims for reimbursement for a single hazardous substance incident exceed the sum of one hundred thousand dollars (\$100,000), the board of examiners shall determine an appropriate and equitable basis of payment of reimbursements.

(3) Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall draw deficiency warrants in the authorized amounts against the general fund.

(4) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provisions of law.

History.

I.C., § 39-7110, as added by 1991, ch. 242, § 1, p. 582; am. 1994, ch. 180, § 75, p. 420; am. 1997, ch. 121, § 7, p. 357; am. 2003, ch. 32, § 21, p. 115.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 75 of S.L. 1994, ch. 180 became effective January 2, 1995.

§ 39-7111. Liability for release of a hazardous substance. — (1) Any person who owns, controls, transports, or causes the release or threat of release of a substance which is involved in a hazardous substance incident shall be strictly liable for the costs arising out of a hazardous substance incident, identified in [section 39-7112, Idaho Code](#). There shall be no liability under this chapter for a person otherwise liable who can establish by a preponderance of the evidence that:

(a) The hazardous substance incident was caused solely by: (i) An act of God; (ii) An act of war; (iii) An act or omission of a third party, other than an employee or agent of the potentially liable person if: 1. The potentially liable person exercised reasonable care with respect to the substance involved, taking into consideration the characteristics of the substance in light of all relevant facts and circumstances; and 2. The potentially liable person took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or (iv) Application of a pesticide product or fertilizer registered under the federal insecticide, fungicide, and rodenticide act, [7 U.S.C. section 136, et seq.](#), according to label requirements; or (b) The substance was not a hazardous substance and the person otherwise liable acted reasonably under the circumstances.

History.

[I.C., § 39-7111](#), as added by 1991, ch. 242, § 1, p. 582; am. 2009, ch. 281, § 5, p. 844.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 281, in the first sentence in subsection (1), inserted “or threat of release” and deleted “hazardous” preceding the first occurrence of “substance”; in subsection (1)(a)(iii)1., twice deleted “hazardous” preceding “substance”; and added subsection (1)(b).

Compiler’s Notes.

This section was enacted with a subsection (1), but no subsection (2).

§ 39-7112. Cost recovery and civil remedies. — (1) The military division shall be responsible for recovering those costs incurred by the state arising out of a hazardous substance incident identified in [section 39-7109, Idaho Code](#), and other costs including processing the documented costs submitted by response agencies, attorney's fees, investigation costs, prelitigation and litigation costs.

(2) In deciding whether to commence a cost recovery action, and against whom a cost recovery action will be filed, the military division in exercising its prosecutorial discretion will take into consideration the cause of the incident, the total amount of cost incurred in responding to the incident, the avoidability of the incident and such other factors as the military division deems appropriate.

(3) The remedy for the recovery of those emergency response costs identified in [section 39-7109, Idaho Code](#), provided by this chapter shall be exclusive and shall not be used in conjunction with or in addition to any other remedy for recovery of such costs provided by applicable federal laws. Any person who receives compensation for the emergency response costs pursuant to any other federal or state law shall be precluded from recovering compensation for such costs pursuant to this chapter. Nothing in this chapter shall otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury or loss resulting from the release of any hazardous substance or potentially hazardous substance or for remedial action or the cost of remedial action for such release.

(4) It shall be the duty of the attorney general to commence any civil action brought by the military division pursuant to this chapter. At the request of a political subdivision of the state or a local governmental entity who has responded to or contained a hazardous substance incident, the attorney general may commence a civil action on their behalf pursuant to this chapter.

(5) Any person who renders assistance at the request of the incident commander or his authorized designee in response to a hazardous substance

incident may file a civil action under the provisions of this chapter for recoverable costs which have not been reimbursed by the state.

(6) There is hereby created in the state treasury the hazardous substance emergency response fund. Recoveries by the state for reimbursed costs shall be deposited in said fund to offset amounts paid as reimbursement.

History.

I.C., § 39-7112, as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 8, p. 357; am. 2004, ch. 181, § 1, p. 568; am. 2009, ch. 281, § 6, p. 844.

STATUTORY NOTES

Cross References.

Attorney general, § 39-7112.

Amendments.

The 2009 amendment, by ch. 281, in subsection (1), substituted “other costs” for “legal costs” and inserted “processing the documented costs submitted by response agencies” and “prelitigation”; in the last sentence in subsection (3), inserted “or potentially hazardous substance”; and, in subsection (5), inserted “at the request of the incident commander or his authorized designee.”

§ 39-7113. Persons rendering assistance relating to hazardous substance incidents — Good samaritan limited immunity. — (1)

Consistent with the provisions of subsections (2) and (3) of this section:

(a) The state shall be liable for the acts or omissions of the state emergency response teams responding to a hazardous substance incident.

(b) The designating or requesting city or county shall be liable for the acts or omissions of a local emergency response authority responding to a hazardous substance incident within its jurisdiction.

(2) Notwithstanding any provision of law to the contrary, any state emergency response team, local emergency response authority or other person who responds to a hazardous substance incident at the request of an incident commander shall not be subject to civil liability for assistance or advice, except as provided in subsection (3) of this section.

(3) The exemption from civil liability provided in this section shall not apply to:

(a) An act or omission that caused in whole or in part such hazardous substance incident or a person who may otherwise be liable therefor; or

(b) Any person who has acted in a grossly negligent, reckless, or intentional manner.

(4) Nothing in this section shall be construed to abrogate or limit the immunity granted to governmental entities pursuant to chapter 9, title 6, Idaho Code.

History.

I.C., § 39-7113, as added by 1991, ch. 242, § 1, p. 582.

§ 39-7114. Private emergency response plan approval. — Private emergency response plans may be prepared for any facility or specific set of conditions. A private emergency response plan must be approved by the local emergency response authority or the military division unless the plan:

(1) Is a contingency plan that has been approved in the issuance of a final part B operating permit, in accordance with [section 39-4401, Idaho Code](#), by the Idaho department of environmental quality;

(2) Is a contingency plan prepared in accordance with the requirements of rules promulgated pursuant to [section 39-4401, Idaho Code](#), by the Idaho department of environmental quality;

(3) Has otherwise been approved by the military division or department of environmental quality. Private emergency response plans must be submitted, for file purposes, to the local emergency response authorities and the military division to qualify as a private emergency response plan under this section.

History.

[I.C., § 39-7114](#), as added by 1991, ch. 242, § 1, p. 582; am. 1997, ch. 121, § 9, p. 357; am. 2001, ch. 103, § 65, p. 253.

§ 39-7114A. Civil air patrol. — (1) There is hereby established within the military division and the Idaho office of emergency management the Idaho directorate of civil air patrol. The mission of the directorate shall be to provide support for and facilitate the operation of the civil air patrol, Idaho wing, which shall be under the command and control of the duly appointed commanding officer of such wing.

(2) In consideration for services rendered to the state of Idaho by the directorate of civil air patrol, Idaho wing, the military division shall provide in-kind services to the directorate in the form of land use, hangar facilities, mess and billeting facilities, office space and other entities when deemed necessary and when such facilities are available.

History.

I.C., § 39-7114A, as added by 2012, ch. 313, § 1, p. 862; am. 2016, ch. 118, § 5, p. 331.

STATUTORY NOTES

Cross References.

Idaho office of emergency management, § 46-1004.

Amendments.

The 2016 amendment, by ch. 118, substituted “Idaho office of emergency management” for “bureau of homeland security” in subsection (1).

§ 39-7115. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 39-7115, as added by 1991, ch. 242, § 1, p. 582.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1991, ch. 242, which is compiled as §§ 39-7101 to 39-7115.

Effective Dates.

Section 2 of S.L. 1991, ch. 242 declared an emergency. Approved April 4, 1991.

Chapter 72

IDAHO LAND REMEDIATION ACT

Sec.

39-7201. Short title.

39-7202. Legislative findings.

39-7203. General definitions.

39-7204. Participation.

39-7205. Work plans.

39-7206. Evaluation and review responsibilities.

39-7207. Covenant not to sue.

39-7208. Recision.

39-7209. Lender liability.

39-7210. Rules.

39-7211. Idaho community reinvestment pilot initiative. [For contingent repeal, see Compiler's note.]

§ 39-7201. Short title. — This chapter may be known and cited as the “Idaho Land Remediation Act.”

History.

I.C., § 39-7201, as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in **Section 39-7210, Idaho Code**, contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7202. Legislative findings. — The legislature hereby finds and declares:

(1) That it is the policy of the state of Idaho to provide for the protection of the public health, welfare, safety, and environment; and to foster the remediation, transfer, reuse, or redevelopment of sites or groups of sites based on the risk to human health and the environment where releases or threatened release of hazardous substances or petroleum exists. The minimization of risk to public health and the environment on a commercial and industrial site offers significant potential economic benefit to local communities and is vital to their use and reuse as sources of employment, housing, recreation and open-space areas.

(2) That establishing a voluntary program for the remediation of hazardous substance or petroleum contaminated sites will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in remediation plan approvals.

(3) That providing financial assistance to eligible property owners who conduct voluntary cleanups will promote the economic revitalization of property, particularly in rural communities, and will reduce or eliminate the need for many adversarial enforcement actions and delays in remediation plan approvals.

History.

I.C., § 39-7202, as added by 1996, ch. 252, § 1, p. 795; am. 2006, ch. 308, § 1, p. 947.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 308, added subsection (3).

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7203. General definitions. — As used in this chapter:

- (1) “Board” means the board of environmental quality.
- (2) “Department” means the department of environmental quality.
- (3) “Eligible property owner” means any individual, association, partnership, firm, joint stock company, trust, estate, private corporation, or any other nonpublic entity that is the current owner of a contaminated property, but that did not cause, contribute, or consent to the release that led to the contamination or own the property at the time of the release that led to the contamination. An eligible property owner shall not include any individual, association, partnership, firm, joint stock company, trust, estate, private corporation, or any other nonpublic entity that is:
 - (a) Affiliated with any individual or entity that caused, contributed, or consented to the release that led to the contamination, or owned the property at the time of the release that led to the contamination, whether directly or through a direct or indirect familial relationship, or any contractual, corporate, or financial relationship, excluding such relationships created by a contract for the sale of the property at issue; or
 - (b) The owner as a result of a reorganization of an entity that caused, contributed, or consented to the release that led to the contamination, or that owned the property at the time of the release that led to the contamination.
- (4) “Hazardous substance” has the meaning set forth in section 101(14) of the comprehensive environmental, response, compensation and liability act (CERCLA), [42 U.S.C. 9601 \(14\)](#) as amended.
- (5) “Person” means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.
- (6) “Petroleum” includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of

temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute).

(7) “Qualifying remediation costs” means reasonable costs incurred performing remediation activities integral to achieving the cleanup goals identified in a remediation work plan approved by the department.

(8) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.

(9) “Remediation” means any of the following:

(a) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or

(b) Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or

(c) The cleanup or removal of released hazardous substances or petroleum from the environment.

(10) “Site” means a parcel of real estate for which an application has been submitted under [section 39-7204, Idaho Code](#).

(11) “Technical professional” means a professional geologist or professional engineer registered in the state of Idaho.

History.

[I.C., § 39-7203](#), as added by 1996, ch. 252, § 1, p. 795; am. 2001, ch. 103, § 66, p. 253; am. 2006, ch. 308, § 2, p. 947.

STATUTORY NOTES

Cross References.

Board of environmental quality, § 39-107.

Amendments.

The 2006 amendment, by ch. 308, added subsections (3), (7), and (11), and redesignated the remaining subsections accordingly.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: "This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997." Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7204. Participation. — (1) To participate in the remediation program a person must submit an application to the department as described under subsection (2) of this section.

(2) An application submitted under this section must meet the following conditions: (a) Contain the following general information concerning: (i) the person,

(ii) the site, and

(iii) other background information as requested by the department; (b) An environmental assessment that conforms to ASTM Standard Practice E 1527, as amended, or equivalent.

(3) Not more than thirty (30) days after receiving an application under subsection (2) of this section, the department shall determine if the person is eligible to participate in the remediation program under this chapter.

(4) The department may reject an application submitted under subsection (2) of this section for any of the following reasons: (a) Remediation is required pursuant to sections 39-101 through 39-129, sections 39-4401 through 39-4432, or sections 39-7401 through 39-7420, Idaho Code, or rules promulgated thereunder, or other applicable statutory or common law; or (b) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment; or (c) The application is not complete.

(5) If the application is rejected under subsection (4)(c) of this section, the department shall provide the person with a list of all information needed to make the application complete. If the department fails to comply with this subsection, the application shall be considered completed for the purposes of this chapter.

(6) If the department rejects an application, the department shall do the following: (a) Notify the person that the department rejected the application; (b) Explain the reason the department rejected the application.

History.

I.C., § 39-7204, as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Compiler's Notes.

For ASTM Standard Practice for Environmental Site Assessments, see <http://www.astm.org/Standards/E1527.htm>.

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: "This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997." Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7205. Work plans. — (1) If the department determines an application is eligible under this chapter, the person may submit a proposed voluntary remediation work plan to the department. Before the department evaluates a proposed voluntary remediation work plan, the person who submitted the work plan and the department must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan.

(a) A voluntary remediation agreement must include the following:

(i) An estimation of costs the department may incur under this chapter; (ii) A payment schedule of all reasonable costs estimated to be incurred by the department in the review and oversight of the work plan; (iii) A provision for the department's oversight including access to site and pertinent site records; (iv) A timetable for the department to do the following:

1. Reasonably review and evaluate the adequacy of the work plan; or 2. Make a determination concerning the approval or rejection of the work plan; (v) A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions; (vi) Any other conditions considered necessary by the department or the person concerning the effective and efficient implementation of this chapter.

(b) A proposed voluntary remediation work plan must include a proposed statement of work and schedule to accomplish the remediation in accordance with rules established by the board. Any institutional control proposed as part of a work plan that requires activity and/or use limitations shall comply with the uniform environmental covenants act, chapter 30, title 55, Idaho Code.

(2) If a voluntary remediation agreement is not reached between a person and the department within a reasonable time after good faith negotiations have begun, the person or the department may withdraw from the negotiations.

History.

I.C., § 39-7205, as added by 1996, ch. 252, § 1, p. 795; am. 2010, ch. 99, § 1, p. 191.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 99, added the last sentence in paragraph (1) (b).

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7206. Evaluation and review responsibilities. — (1) Pursuant to the signed voluntary remediation agreement, the department or a person under contract with the department shall do the following:

(a) Review and evaluate the site and the affected area surrounding the site;

(b) Review and evaluate the proposed voluntary remediation work plan for protection of public health and the environment based on rules promulgated by the board.

(2) At any time during the evaluation of a proposed voluntary remediation work plan, the department may request that a person submit additional or corrected information to the department. A person may: (a) Comply with the request; or

(b) Withdraw the person's proposed voluntary remediation work plan from consideration and terminate the voluntary remediation agreement.

(3) Before the department approves a proposed voluntary remediation work plan under this section, the department must: (a) Notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan; and, (b) Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one (1) public library in a county affected by the work plan; and, (c) Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan; and, (d) Provide a comment period of at least thirty (30) days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following: (i) submit written comments to the department concerning the proposed voluntary remediation work plan, (ii) request a public hearing concerning the proposed voluntary remediation work plan.

(4) If the department receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation

work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

(5) The department shall:

(a) Approve;

(b) Modify and approve; or

(c) Reject the proposed voluntary remediation work plan.

(6) If the department rejects a proposed voluntary remediation work plan under this section: (a) The department shall notify the person and specify the reasons for rejecting the work plan; and (b) The person may appeal the department's decision under chapter 52, title 67, Idaho Code.

(7) If the department approves, or modifies and approves, a proposed voluntary remediation work plan under this section, the department shall: (a) Notify the person in writing, under the applicable provisions set forth in this chapter, that the voluntary remediation work plan has been approved, or modified and approved; (b) Incorporate the approved voluntary remediation work plan into the voluntary remediation agreement.

History.

I.C., § 39-7206, as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: "This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997." Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7207. Covenant not to sue. — (1) If the department determines that a person has successfully completed a voluntary remediation work plan approved under this chapter, the department shall certify that the work plan has been successfully implemented or satisfied by issuing the person a certificate of completion. The issuance of a certificate of completion under this section is a final agency action for purposes of this chapter.

(2) A person who receives a certificate of completion under this section shall record a copy of the certificate of completion with the deed for the site on which the remediation took place.

(3) If the department determines that the person has not successfully implemented a voluntary remediation work plan approved under this chapter, the department shall notify the person of this determination under this chapter.

(4) If the department issues a certificate of completion to a person under this chapter, the department, upon request, shall also negotiate and provide the person a covenant not to sue for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully implemented under this chapter. The covenant not to sue shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release.

(5) A covenant not to sue issued under this section shall not apply to claims for a condition or the extent of a condition that:

(a) Was present on the site involved in an approved and implemented voluntary remediation work plan; and

(b) Was not known to the department at the time the department issued the certificate of completion under this chapter.

(6) Except as provided under federal law or agreed to by a federal governmental entity, a covenant not to sue issued under this section shall not release a person from liability to the federal government for claims based on federal law.

(7) During the implementation of an approved voluntary remediation work plan, the department shall not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan.

History.

I.C., § 39-7207, as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7208. Recision. — (1) This chapter does not prohibit or limit the department's recision of the voluntary remediation agreement or the covenant not to sue at any time if:

(a) The person implementing the work plan fails substantially to comply with the terms and conditions of:

(i) a voluntary remediation agreement, or

(ii) covenant not to sue;

(b) A hazardous substance or petroleum release becomes an imminent and substantial threat to human health or the environment.

(2) The department shall also notify the county in which the said site exists of recision of the covenant not to sue for the purposes of determining property exemptions provided under [section 63-602BB, Idaho Code](#).

History.

[I.C., § 39-7208](#), as added by 1996, ch. 252, § 1, p. 795; am. 1997, ch. 117, § 41, p. 298.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: "This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997." Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 through 40 would be in full force and effect on and after passage and approval and that § 41 should be in full force and effect on and after February 15, 1997. Approved March 15, 1997.

§ 39-7209. Lender liability. — Pursuant to rules adopted by the board, a person who maintains indicia of ownership primarily to protect a security interest in a site, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, [60 Federal Register 63517](#), dated December 11, 1995, as amended. This section shall apply to all indicia of ownership existing at the time of passage of this chapter and those arising thereafter.

History.

[I.C., § 39-7209](#), as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7210. Rules. — Within one (1) year after the effective date of this section, the board shall, through negotiated rulemaking, adopt rules to carry out the purposes of this provision consistent with federal and state law which shall provide for the following:

(1) The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal and state standards and are consistent with [42 U.S.C. 9621](#), taking into consideration scientific information regarding the following:

- (a) protection of public health and the environment,
- (b) the future industrial, commercial, residential, or other use of the site to be remediated and of surrounding properties,
- (c) the availability of institutional or engineering controls that are protective of public health and the environment, including deed restrictions, and
- (d) natural background levels for hazardous constituents;

(2) The establishment of administrative procedures that minimize delay and expense of the remediation, processing submissions and overseeing remediation;

(3) The issuance of certificates of completion once the voluntary remediation work plans is [are] implemented;

(4) Consistent with applicable local, state and federal law, guidelines to assist in the issuance of any permits required to initiate and complete a voluntary remediation work plan;

(5) Collection and payment of fees to defray the actual reasonable costs of the voluntary remediation program.[;]

(6) Lender liability consistent with United States environmental protection agency policy, [60 Federal Register 63517](#), dated December 11, 1995, as amended.

History.

I.C., § 39-7210, as added by 1996, ch. 252, § 1, p. 795.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this section” in the introductory paragraph refers to the effective date of the enactment of this section by S.L. 1996, ch. 252, which was February 15, 1997.

The bracketed insertions in paragraphs (d)(3) and (d)(5) were added by the compiler to correct the enacting legislation.

Effective Dates.

Section 3 of S.L. 1996, ch. 252 read: “This act shall be in full force and effect on and after February 15, 1997, provided that the Board of Health and Welfare is authorized to promulgate rules to implement the provisions of this act on and after July 1, 1996, as provided in [Section 39-7210, Idaho Code](#), contained in Section 1 of this act. Section 2 of this act shall be in full force and effect on and after January 1, 1997.” Such rules were proposed on November 16, 1996 and, thus, the act became effective February 15, 1997.

§ 39-7211. Idaho community reinvestment pilot initiative. [For contingent repeal, see Compiler's note.] — (1) There is hereby established in the state treasury a fund to be known as the Idaho community reinvestment pilot initiative fund which shall consist of moneys appropriated to the fund, donations, gifts and grants from any source and any other moneys which may hereafter be provided by law. The state treasurer shall be the custodian of the fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the fund shall be deposited in the fund. Moneys in the fund shall be disbursed in accordance with the directions of the director of the department of environmental quality. All moneys in the fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section.

(2) The state of Idaho hereby authorizes financial assistance to eligible property owners conducting voluntary cleanup actions pursuant to this chapter. The financial assistance authorized by this section shall not exceed one hundred fifty thousand dollars (\$150,000) per project and shall be limited to, subject to the one hundred fifty thousand dollars (\$150,000) maximum, seventy-percent (70%) of a project's qualifying remediation costs certified by the department pursuant to this section.

(3) Pursuant to general fund appropriation, the maximum overall financial assistance authorized by this section is one million five hundred thousand dollars (\$1,500,000) in qualified remediation cost expenditures. A maximum of ten (10) projects may participate in the initiative.

(4) The department shall establish an annual priority list for community revitalization projects. The priority list shall be used as the method for allocating funds under this initiative.

(a) On an annual basis, the department shall establish, at a minimum, a continuous three (3) month calendar period in which eligible property owners may submit a written request, on a standard form developed by the department, to participate.

(b) On an annual basis, the department shall develop a priority list based on a weighted numerical points system established by the department.

The rating system shall consider the following criteria wherein the department shall weigh each succeeding criteria less heavily than the preceding criteria:

- (i) Whether the project is located in a city with a population of under twenty thousand (20,000) residents;
 - (ii) The level of social and economic benefit expected from the proposed reuse plan;
 - (iii) Whether contamination is preventing or complicating redevelopment;
 - (iv) Whether a reuse plan meets local planning and reuse goals, is compatible with long-term plans, and is ready to proceed;
 - (v) The level of human health risks the cleanup will remedy;
 - (vi) Current property conditions, including building safety concerns, vacancy rates and the level of negative visual impact the property has on the community.
- (c) The department shall maintain annual priority lists of the twenty-five (25) highest priority projects.
- (d) After finalizing the priority list, the department shall contact, in writing, the eligible property owners that submitted the ten (10) highest ranked priority projects and will set a target date for the eligible property owners to enter into a voluntary remediation agreement as described in subsection (1) of [section 39-7205, Idaho Code](#).
- (e) The department may bypass a project, and submit in its place the next highest priority project on the project list, for any of the following reasons:
- (i) The eligible property owner fails to enter into a voluntary remediation agreement by the target date established by the department;
 - (ii) The eligible property owner, in writing, withdraws its request to participate; or
 - (iii) The voluntary remediation agreement is terminated or rescinded by the department prior to commencement of remediation as described

in the voluntary remediation agreement approved by the department.

The department shall notify the bypassed eligible property owner of the reason or reasons for the bypass.

(5) Eligible property owners may request a community investment rebate by submitting documentation and certifications enumerated in paragraphs (a) through (c) of this subsection to the department. Eligible property owners shall submit this information no more than sixty (60) days after the department issues a certificate of completion for the project. Eligible property owners must receive a written certificate of completion from the department before the department may certify qualifying remediation costs or provide a community reinvestment rebate. Information to be submitted includes:

(a) Copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving actual costs incurred completing remediation activities in accordance with the work plan approved by the department;

(b) Notarized documentation completed and signed by the participant certifying that all information contained in the application, including all records of claims, costs incurred, and costs paid, are true and correct and constitute qualifying remediation costs;

(c) Notarized documentation completed and signed by a technical professional certifying that a technical professional oversaw all remediation work plan activities and that all costs associated with documents submitted pursuant to this subsection constitute qualifying remediation costs.

(6) Community reinvestment rebate requests shall be reviewed and certified as follows:

(a) The department shall review each community reinvestment rebate request and determine whether the request is complete. If the department determines the request is incomplete, the department shall return the request, with the deficiencies indicated, to the eligible property owner by certified mail;

(b) Once a community reinvestment rebate request is deemed complete, the department shall review the request and determine the project's qualifying remediation costs. The department shall then issue a certification of the qualifying remediation costs for all those costs found to be reasonable by the department;

(c) The department shall issue the eligible property owner a community reinvestment rebate in the amount it certified as qualified remediation costs no more than thirty (30) days after department certification;

(d) Any eligible property owner or technical professional determined in a civil enforcement action to have submitted a false statement, representation or certification in any application, record, report, plan or other document submitted to the department, shall reimburse the state of Idaho for moneys wrongfully rebated and shall be liable for civil penalties and expenses incurred by the department in accordance with chapter 1, title 39, Idaho Code.

(7) Eligible property owners that receive a community investment rebate are not eligible to receive the property tax exemption established under [section 63-602BB, Idaho Code](#).

History.

[I.C., § 39-7211](#), as added by 2006, ch. 308, § 3, p. 947.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

Section 4 of S.L. 2006, ch. 308 provided: "Section 3 of this act shall be null, void and of no force and effect on and after the date the director of the Department of Environmental Quality certifies to the Secretary of State that the department has expended funds at ten community revitalization projects pursuant to the provisions of Section 3 of this act."

Idaho Code Ch. 73

• [Title 39](#)», « [Ch. 73](#) »

Chapter 73

[RESERVED]

Idaho Code Ch. 74

• Title 39 », « Ch. 74 »

Chapter 74

IDAHO SOLID WASTE FACILITIES ACT

Sec.

39-7401. Legislative findings and purposes.

39-7402. Applicability.

39-7402A. Excluded facilities.

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39-7404. Consistency with federal law — Status of appendices.

39-7405. Authority regarding solid waste.

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39-7408C. Siting license application — Fee — Rules.

39-7408D. Duties of the director relative to siting applications.

39-7409. Standards for design.

39-7410. Ground water monitoring design.

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39-7413. Operations plan review.

39-7414. Assessment monitoring and corrective action.

39-7415. Standards for closure.

39-7416. Standards for post closure care.

39-7417. Financial assurance for closure, post closure care and corrective action.

39-7418. Modifications to sites approved under this chapter.

39-7419. Inspections.

39-7420. Violations and enforcement.

39-7421. Research, development and demonstration permits.

§ 39-7401. Legislative findings and purposes. — (1) The legislature finds:

- (a) That adverse public health and environmental impacts can result from the improper land disposal of solid waste and that the need for establishing safe sites with adequate capacity for the disposal of solid waste is a matter of statewide concern and necessity; and
- (b) That the resource conservation and recovery act ([42 U.S.C. sec. 6901, et seq.](#)) as amended, and regulations adopted pursuant thereto, establish complex, detailed and costly provisions for the location, design, operation and monitoring of solid waste disposal sites, including such sites as may be operated pursuant to the responsibility established in chapter 44, title 31, Idaho Code; and
- (c) That a state program to implement flexible standards provided in [40 CFR 258](#), if approved by the U.S. environmental protection agency, enables a state to take advantage of site specific factors in the design and operation of solid waste facilities and flexibility in meeting federal criteria set forth in that regulation; and
- (d) That [40 CFR 258](#) provides that such a program of flexible standards requires approvals by a designated state agency; and
- (e) That chapter 1, title 39, Idaho Code, vests the department of environmental quality with the responsibility to issue a certificate of suitability concerning prospective solid waste landfill sites, to approve solid waste facility and ground water monitoring programs and to provide approvals pursuant to [40 CFR 258](#); and
- (f) That chapter 44, title 31, Idaho Code, imposes on the counties the primary responsibility for the development and operation of a solid waste management system; and
- (g) That chapter 4, title 39, Idaho Code, vests the health districts with the primary responsibility for the review of solid waste facility operations plans and the enforcement of solid waste management operations; and

(h) That the coordination and timeliness of response to federal law on the part of all public officials within the state is critical to compliance with federal regulations, the ability of each affected agency to carry out their statutory responsibilities and the avoidance of excessive construction and public expenditures.

(2) Therefore, it is the intent of the legislature to establish a program of solid waste management which complies with [40 CFR 258](#) and facilitates the incorporation of flexible standards in facility design and operation. The legislature hereby establishes the solid waste disposal standards and procedures outlined herein and a facility approval process for the state of Idaho, the political subdivisions thereof, and any private solid waste disposal site owner in order to facilitate the development and operation of solid waste disposal sites, to effect timely and responsible completion of statutory duties and to ensure protection of human health and the environment, to protect the air, land and waters of the state of Idaho.

History.

[I.C., § 39-7401](#), as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 1, p. 342; am. 2001, ch. 103, § 67, p. 253.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-7402. Applicability. — (1) The standards and procedures set forth in this chapter apply to owners and operators of new municipal solid waste landfill (MSWLF) units, existing MSWLF units, and lateral expansions of existing MSWLF units, except as otherwise specifically provided.

(2) The requirements of this chapter do not apply to MSWLF units that ceased to accept waste on or prior to October 9, 1991.

(3) MSWLF units that receive waste after October 9, 1991, but stop receiving waste in conformance with the provisions of **40 CFR 258.1(d)**, are exempt from the requirements of this chapter, except as expressly provided herein.

(4) All MSWLF units that receive waste on or after October 9, 1993, must comply with all of the requirements of this chapter, unless otherwise allowed in **40 CFR 258.1(d)**, **(e)** or **(f)**.

(5) MSWLF units failing to satisfy these standards shall cease operation and shall not accept municipal solid waste for disposal by order of the department of environmental quality and/or the district health department until provisions of this chapter are complied with unless a compliance schedule has been approved by the director of the department of environmental quality and/or the district health department.

(6) MSWLF units failing to satisfy the requirements set forth in this chapter are considered open dumps for purposes of state solid waste management planning and are prohibited under section 4005 of RCRA.

(7) MSWLF units containing sewage sludge and which fail to satisfy the criteria set forth in **40 CFR 258** violate sections 309 and 405(e) of the clean water act.

History.

I.C., § 39-7402, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 2, p. 342; am. 1994, ch. 75, § 2, p. 156; am. 2001, ch. 103, § 68, p. 253.

STATUTORY NOTES

Federal References.

Section 4005 of the Resource Conservation and Recovery Act (RCRA), referred to in subsection (6), is compiled as [42 USCS § 6945](#).

Sections 309 and 405(e) of the clean water act, referred to in subsection (7), are codified as [42 USCS §§ 1319](#) and [1345\(e\)](#), respectively.

Compiler's Notes.

The letters “MSWLF” enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

County Board of Commissioners.

A county board of commissioners does not fall within the definition of an “agency” for the purposes of applying the administrative procedures act in its totality; however, the commissioners’ decisions are subject to judicial review under this chapter. [Petersen v. Franklin County, 130 Idaho 176, 938 P.2d 1214 \(1997\)](#).

§ 39-7402A. Excluded facilities. — This chapter shall not apply to any facility subject to the provisions of subtitle C of RCRA, the hazardous waste management act of 1983, as amended (section 39-4401, et seq., Idaho Code) or the state hazardous waste facility siting act, as amended (section 39-5801, et seq., Idaho Code).

History.

I.C., § 39-7421, as added by 1992, ch. 292, § 2, p. 972; am. and redesign. 1993, ch. 139, § 3, p. 342.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1992, ch. 292 read: “(1) The legislature of the State of Idaho hereby finds that: (a) certain classes of facilities that dispose of, store or treat hazardous materials and wastes are comprehensively regulated pursuant to federal and state laws.

“(2) Therefore, it is hereby declared that the purpose of this act is to preclude additional regulations through the enactment of **Section 39-7421, Idaho Code.**”

Federal References.

Subtitle C of the resource conservation and recovery act (RCRA), referred to in this section, is compiled as **42 USCS § 6921 et seq.**

Compiler’s Notes.

This section was formerly compiled as § 39-7421.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1992, ch. 292 declared an emergency. Approved April 8, 1992.

§ 39-7403. Definitions. — As used in this chapter:

(1) “Active portion” means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with **40 CFR 258.60**.

(2) “Agricultural wastes” means wastes generated on farms resulting from the production of agricultural products including, but not limited to, manures and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds but do not include wastes that are classified as hazardous.

(3) “Applicant” means the owner or the operator with the owner’s written consent.

(4) “Aquifer” means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

(5) “Board” means the Idaho board of environmental quality.

(6) “Buffer zone” means that part of a facility that lies between the active portion and the property boundary.

(7) “Clean soils and clean dredge spoils” means soils and dredge spoils which are not hazardous wastes or problem wastes as defined in this section.

(8) “Commercial solid waste” means all types of solid waste generated by stores, offices, restaurants, warehouses and other nonmanufacturing activities, excluding residential and industrial wastes.

(9) “Commercial solid waste facility” means a facility owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excludes a facility owned or operated by a political subdivision, state or federal agency, municipality or a facility owned or operated by any individual, association, firm or partnership exclusively for the disposal of solid waste generated by such individual, association, firm or partnership.

(10) “Construction/demolition waste” means the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures. Such waste includes, but is not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving materials and tree stumps. Noninert wastes and asbestos wastes are not considered to be demolition waste for the purposes of this chapter.

(11) “Contaminate” means to allow discharge of a substance from a landfill that would cause:

(a) The concentration of that substance in the ground water to exceed the maximum contamination level (MCL) specified in [40 CFR 258.40](#), Idaho drinking water standards; or

(b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contamination level specified in paragraph (a) of this subsection; or

(c) A statistically significant increase above background in the concentration of a substance which:

(i) is not specified in paragraph (a) of this subsection; and

(ii) is a result of the disposal of solid waste; and

(iii) has been determined by the department to present a substantial risk to human health or the environment in the concentrations found at the point of compliance.

(12) “County” means any county in the state of Idaho.

(13) “Cover material” means soil or other suitable material that is used to protect the active portion of the MSWLF unit.

(14) “Director” means the director of the Idaho department of environmental quality.

(15) “Existing MSWLF unit” means any municipal solid waste landfill unit that is receiving solid waste as of the applicable date specified in [40 CFR 258.1\(e\)](#).

(16) “Facility” means all contiguous land and structures, buffer zones, and other appurtenances and improvements on the land used for the disposal of solid waste.

(17) “Floodplain” means the area encompassed by the one hundred (100) year flood as defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in [40 CFR 258.11](#).

(18) “Ground water” means water below the land surface in a zone of saturation.

(19) “Health district” means one (1) of the seven (7) district health departments of the state of Idaho.

(20) “Holocene fault” means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(21) “Household waste” means any solid waste, including garbage, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(22) “Industrial solid waste” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(23) “Inert wastes” means noncombustible, nonhazardous, nonputrescible, nonleaching solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack.

(24) “Landfill” means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile.

(25) “Landspreading disposal facility” or “land application unit” means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface, excluding manure spreading operations, at greater than agronomic rates and soil conditioners and immobilization rates.

(26) “Lateral expansion” means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

(27) “Leachate” means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

(28) “Limited purpose landfill” means a landfill that receives solid waste of limited type with known and consistent composition other than wood wastes, municipal solid waste, inert waste and construction/demolition waste.

(29) “Liquid waste” as defined in [40 CFR 258.28\(c\)\(1\)](#).

(30) “Monofill” means a landfill which contains a specific waste whose waste stream characteristics remain unchanged over time and may include special wastes, problem wastes or other consistent characteristic wastes but do not include wastes regulated under any other applicable regulations.

(31) “Municipal solid waste landfill unit (MSWLF)” means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under [40 CFR 257.2](#). A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

(32) “New MSWLF unit” means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995, if the MSWLF unit meets the conditions specified in [40 CFR 258.1\(f\)\(1\)](#).

(33) “Open burning” means the combustion of solid waste without: (a) control of combustion air to maintain adequate temperature for efficient combustion; (b) containment of the combustion reaction in an enclosed device to provide sufficient resident time and mixing for complete combustion; and (c) control of the emission of the combustion products.

(34) “Operator” means the person(s) responsible for the overall operation of a facility or part of a facility.

(35) “Owner” means the person(s) who owns a facility or part of a facility.

(36) “Permeability” means the capacity of a material to transmit a liquid. For the purposes of this chapter permeability is expressed in terms of hydraulic conductivity of water in centimeters-per-second units of measurement.

(37) “Person” means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry, or any other legal entity whatsoever.

(38) “Pile” or “waste pile” means any noncontainerized solid, nonflowing waste that is accumulated for treatment or storage.

(39) “Plan of operation” means the written plan developed by an owner or operator of a MSWLF unit detailing how the facility is to be operated during its active life, during closure, and throughout the post closure period.

(40) “Point of compliance” means a vertical surface located at the hydraulically downgradient intercept with the uppermost aquifer at which a release from a waste management unit measured as change in constituent values will trigger assessment monitoring. Point of compliance shall be used to define the facility design, location and frequency of ground water monitoring wells and corrective action.

(41) “Post closure” means the requirements placed upon the MSWLF unit after closure to ensure their environmental safety for a thirty (30) year

period or until the site becomes stabilized in accordance with [section 39-7416, Idaho Code](#).

(42) “Processing” means an operation conducted on solid waste to prepare it for disposal.

(43) “Qualified professional” means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(44) “RCRA” means the resource conservation and recovery act ([42 U.S.C. sec. 6901 et seq.](#)), as amended.

(45) “Run-off” means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(46) “Run-on” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(47) “Saturated zone” means that part of the earth’s crust in which all voids are filled with water.

(48) “Septage” means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(49) “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a waste water treatment plant.

(50) “Solid waste” means any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under [33 U.S.C. 1342](#), or source, special nuclear, or byproduct material as defined in the atomic energy act of 1954, as amended ([68 Stat. 923](#)). These regulations shall not apply to the following solid wastes:

- (a) Overburden, waste dumps and low-grade stockpiles from mining operations;
- (b) Liquid wastes whose discharge or potential discharge is regulated under federal, state or local water pollution permits;
- (c) Hazardous wastes as designated in the hazardous waste management act, chapter 44, title 39, Idaho Code;
- (d) Wood waste used for ornamental, animal bedding, mulch and plant bedding and road building purposes;
- (e) Agricultural wastes, limited to manures and crop residues, returned to the soils at agronomic rates;
- (f) Clean soils and clean dredge spoils as otherwise regulated under section 404 of the federal clean water act ([PL 95-217](#));
- (g) Septage taken to a sewage treatment plant permitted by either the U.S. environmental protection agency or the department; and
- (h) Wood debris resulting from the harvesting of timber and the disposal of which is permitted under chapter 1, title 38, Idaho Code.

(51) “Special waste” means those wastes which require special treatment or handling after it arrives at the disposal site. The term includes, but is not limited to, asbestos containing material, petroleum contaminated soils, low-level PCB containing material, low-level dioxin containing material and uncut tires.

(52) “Statistically significant” means significant as determined by ANOVA analysis of variance as applied within [40 CFR 258.53\(h\)\(2\)](#) or as provided by [40 CFR 258.53\(g\)\(5\)](#).

(53) “Uppermost aquifer” means the geological formation nearest the natural ground surface that is an aquifer as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility’s property boundary.

(54) “Waste management unit boundary” means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(55) “Water quality standard” means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters for the state of Idaho.

(56) “Wetlands” as defined in [40 CFR 232.2\(r\)](#).

(57) “Wood waste” means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel and log yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Undefined terms shall be given their usual and ordinary meaning within the context of the provisions of this chapter.

History.

[I.C., § 39-7403](#), as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 4, p. 342; am. 1994, ch. 75, § 3, p. 156; am. 1996, ch. 419, § 1, p. 1389; am. 2001, ch. 103, § 69, p. 253; am. 2007, ch. 83, § 8, p. 221.

STATUTORY NOTES

Cross References.

Board of environmental quality, § 39-107.

Amendments.

The 2007 amendment, by ch. 83, deleted former subsection (50)(h), which read: “Radioactive wastes, defined in the radiation and nuclear materials act, chapter 30, title 39, Idaho Code” and made a related redesignation.

Federal References.

The atomic energy act of 1954, referred to in the introductory paragraph in subsection (50), is compiled as [42 USCS § 2011 et seq.](#)

Subtitle C of the resource conservation and recovery act (RCRA), referred to in subsection (22), is compiled as [42 USCS § 6921 et seq.](#)

Subtitle D of the resource conservation and recovery act (RCRA), referred to in subsection (31), is codified as [42 USCS § 6941 et seq.](#)

Section 404 of the federal clean air act ([PL 25-217](#)), referred to in paragraph (50)(f), is codified as [33 U.S.C.S. § 1344](#).

Compiler's Notes.

The term “injection well” is not defined under [40 C.F.R. § 257.2](#). However, a definition may be found at [40 C.F.R. § 260.10](#).

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

A.L.R. — What Constitutes Solid Waste Subject to Regulation under Resource Conservation and Recovery Act ([42 U.S.C. § 6901 et seq.](#)). [83 A.L.R. Fed. 2d 235](#).

§ 39-7404. Consistency with federal law — Status of appendices. —

The legislature intends that the state of Idaho enact and carry out a solid waste program that will enable the state to achieve approved state status with respect to solid waste disposal facility regulation from the federal government.

The legislature finds that subtitle D of RCRA, and in particular the code of federal regulations, title 40, part 257 and 258, establish complex, detailed and costly provisions for the disposal of solid waste. By the provisions of this chapter, the legislature desires to avoid duplicative or conflicting state and federal regulatory systems and allow local MSWLF unit owners the maximum flexibility possible under 40 CFR 257 and 258, to meet the substantive goals of protection of human health and the environment with consideration for actual site and climatic conditions. At any time that 40 CFR 257 or 40 CFR 258 is amended, any additional flexibility or extension otherwise prohibited by this chapter shall be allowed as applicable.

The board may not promulgate any rule pursuant to this act that would impose conditions or requirements more stringent or broader in scope than the referenced RCRA regulations of the United States environmental protection agency or the provisions of this chapter. Until regulations are adopted, agency conclusions in appendix B through appendix H, inclusive, per the “Federal Register” of October 9, 1991, shall be used for technical guidance for relevant provisions of this chapter.

History.

I.C., § 39-7404, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 5, p. 342; am. 1994, ch. 75, § 4, p. 156.

STATUTORY NOTES

Federal References.

Subtitle D of the resource conservation and recovery act (RCRA), referred to in the second paragraph, is codified as 42 USCS § 6941 et seq.

The Resource Conservation and Recovery Act (RCRA), referred to in the second and third paragraphs of this section, is compiled as [42 USCS § 6901 et seq.](#)

Compiler's Notes.

The term “this act” in the third paragraph was added to this section by S.L. 1993, ch. 139, which is codified as §§ 39-105, 39-414, 39-7401 to 39-7404, 39-7406 to 39-7408, and 39-7409 to 39-7420. The term is probably meant to refer to “this chapter,” being chapter 74, title 39, Idaho Code.

§ 39-7405. Authority regarding solid waste. — The local government entity with legal responsibility for disposal of solid waste pursuant to the provisions of chapter 44, title 31, Idaho Code, shall have full authority to manage and control the ownership, disposition and ultimate disposal of solid waste within its jurisdiction. It is the intention of the legislature that this grant of authority shall be construed in manner commensurate with the full extent of the duties established in chapter 44, title 31, Idaho Code.

History.

I.C., § 39-7405, as added by 1992, ch. 331, § 1, p. 972.

§ 39-7406. Respective roles of county, director and health district — Liberal construction. — (1) The county, director and health district each perform key roles in statewide solid waste management. Principal jurisdiction for the various functions of solid waste regulation and management as it pertains to site selection, development, operation, and closure shall be carried out as outlined herein:

(a) Each county may select a solid waste landfill site or sites, evaluate said site(s) for compliance with site certification criteria, develop design plans for construction and operation of MSWLF unit(s), including ground water monitoring programs, provide for public review of its site certification, facility design and operation plans through the conduct of a twenty-eight (28) day public comment period, publish legal notices, serve as the repository of funds established for financial assurance, cooperate with the director and district to construct and operate a solid waste disposal system which protects human health and the environment, and perform such other solid waste related duties as may be specified in chapter 44, title 31, Idaho Code;

(b) The director shall interact and cooperate with federal agencies to secure approved state status concerning solid waste programs, administer the site selection process by requiring an owner to certify, through such professional documentation as may be required in this chapter, that the site is not encumbered by critical site limitations as set forth in [section 39-7407, Idaho Code](#), ascertaining that such certification has been made by a qualified professional, review and approve MSWLF unit design plans, the ground water monitoring program, alternative daily cover and final cover, alternative closure and post-closure care requirements recommended to the director for approval by the district, financial assurance and any other approvals required in [40 CFR 258](#), prepare and/or adopt such regulations as may be necessary to implement the provisions of this chapter, and cooperate in actual site monitoring and corrective action programs; and

(c) The health district shall ascertain that operations standards are met, prepare and/or adopt technical guidance, review and recommend

approval of alternative operating, closure and post-closure requirements to the director, and review and enforce all aspects of operation, closure and post closure except as specified above.

(d) All approvals required by 40 CFR 258 shall be obtained by the owner and/or applicant; and all provisions of 40 CFR 258 which provide for flexibility may be obtained by the owner and/or applicant; and the director shall have the authority to grant all such approvals in accordance with the provisions of this chapter, the duty to make a determination that an application meets standards or provides an acceptable alternative, and the duty to approve or disapprove the application in a timely manner prescribed in this chapter.

(2) This chapter shall be liberally construed to allow these public entities having jurisdiction to perform their respective roles to protect human health and the environment through expeditious and technically proper solid waste management practices, while recognizing the authority of local governments to act in their governmental capacity to perform the duties prescribed in chapter 44, title 31, Idaho Code.

History.

I.C., § 39-7406, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 6, p. 342; am. 1994, ch. 75, § 5, p. 156.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-7407. Location restrictions — Site certification. — (1) The following location restrictions shall apply to all new MSWLF units, existing MSWLF units, and lateral expansions. Existing sites that cannot demonstrate compliance with the following standards for airports, floodplains, or unstable areas, must close by October 9, 1996, except as otherwise provided in [40 CFR 258.16](#).

(2) All MSWLF units to which this chapter is applicable shall meet the following locational standards:

(a) Shall not be located proximate to an airport runway except as provided in [40 CFR 258.10](#);

(b) Shall not be located in areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish, or wildlife, or designated as critical migratory routes for protectively managed species;

(c) Shall not be located so that the active portion is closer than two hundred (200) feet to the property line of adjacent land;

(d) Shall not be located so as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance, provided that if no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the site certification shall contain an analysis of the factors outlined in [section 67-6508, Idaho Code](#), accompanied by findings and conclusions, setting forth the reasons therefore, entered by the local government with jurisdiction after a public hearing in accord with provisions of [section 67-6509, Idaho Code](#), that the public interest would be served by locating a solid waste landfill on the site for which certification is sought;

(e) Shall not be located so that the active portion is any closer than one thousand (1,000) feet to any state or national park, or land reserved or withdrawn for scenic or natural use;

(f) Shall not be located within a one hundred (100) year flood plain except as provided in [40 CFR 258.11](#);

(g) Shall not be located in wetlands, except as provided in [40 CFR 258.12](#);

(h) A MSWLF unit active portion shall not be located:

(i) within three hundred (300) feet or the distance of the point of compliance, whichever is greater, upstream of a perennial stream, or river; and

(ii) within one thousand (1,000) feet of any perennial lake or pond.

(i) A MSWLF unit active portion shall not be located where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the site;

(j) A MSWLF unit shall not be located:

(i) within two hundred (200) feet of a holocene fault as defined in [40 CFR 258.13](#) or adjacent to geologic features which could compromise the structural integrity of the MSWLF unit; and

(ii) within seismic impact zones except as provided in [40 CFR 258.14](#); and

(k) A MSWLF unit active portion shall not be located on any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of an MSWLF unit without unduly threatening the integrity of the design due to inherent site instability. The provisions of [40 CFR 258.15](#) shall be followed.

History.

[I.C., § 39-7407](#), as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 7, p. 342.

CASE NOTES

Evidence Inadmissible.

In action concerning open meetings law and review of an agency action brought pursuant to the administrative procedures act concerning site selection of a landfill, the district court erred in allowing county commissioners to supplement its record with findings of fact regarding compliance with local land use plan where the parties did not make any

allegations that there was a procedural irregularity. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

§ 39-7408. Site certification procedure. — (1) It shall be the responsibility of each applicant to obtain site certification from the director. The site certification process is hereby established to ascertain compliance with the requirements of [section 39-7407, Idaho Code](#).

(2) The site certification procedure shall be administered in the following manner: (a) Prior to submittal of the application, the applicant may conduct a site tour for the director, health district and all other public agencies with jurisdiction to familiarize the agencies with characteristics of the site and site surroundings.

(b) The applicant may then submit an application to the director. The application shall address each of the criteria set forth in [section 39-7407, Idaho Code](#), explaining the technical findings regarding each.

(c) Wherever technical evaluation of relevant information is required, a qualified professional, as appropriate, shall certify compliance with the requisite criteria.

(d) When the application is submitted to the director, the applicant shall publish legal notice of submittal of the application in the newspaper published in the county as determined by the criteria in [section 31-819, Idaho Code](#), and shall make the application available for public inspection and copying. The date of publication of such notice shall begin a twenty-eight (28) day comment period during which written comments concerning the application may be submitted to the director.

(e) The director shall act upon the application within twenty-one (21) days of the end of the comment period set forth above and shall enter a decision either certifying the site or rejecting the application. The director shall review the site certification application, not contravening the opinion of the applicant's qualified professional(s) without reliable empirical evidence that the affirmations in the application are erroneous. Upon finding that the criteria of [section 39-7407, Idaho Code](#), have been affirmed by qualified professionals, the director shall certify the site. Any rejection of a site certification application shall be accompanied by findings in writing expressly stating the criteria insufficiently

documented and/or violated and the evidence relied upon in making such determination. Failure of the director to act within twenty-one (21) days shall constitute site certification. An applicant shall be provided an opportunity to appeal any denial of certification.

(f) Site certification is transferable with ownership of the site.

(g) Within ten (10) working days of receipt of certification from the director, the applicant shall publish notice in the newspaper provided for in subsection (d) of this section, informing the public that certification of the site has been approved.

History.

I.C., § 39-7408, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 8, p. 342.

STATUTORY NOTES

Compiler's Notes.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Time Limitations.

Time for filing a petition for review of county commissioner's landfill site selection was tolled because the minutes of meeting where final site selection was made never used the word “final”, the landowners never knew the decision was final and the statement the commissioners would like comments concerning the decisions within 30 days led landowners to believe that they had 30 days in which to object, rather than twenty-eight days, and because commissioners failed to publish the decision as required by subsection (d) and landowners were still attempting to exhaust their administrative remedies following the meeting. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

§ 39-7408A. Site certification procedure for commercial solid waste facilities. — In addition to obtaining site certification as provided in [section 39-7408, Idaho Code](#), no owner or operator of a commercial solid waste facility shall construct, expand or enlarge such a facility without a siting license from the director. Commercial solid waste facilities constructed and in operation on the effective date of this section are not required to obtain a siting license except to expand or enlarge such facilities.

History.

[I.C., § 39-7408A](#), as added by 1996, ch. 419, § 2, p. 1389.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this section” refers to the effective date of S.L. 1996, ch. 419, which was March 20, 1996.

§ 39-7408B. Site review panels — Members, chairman, quorum, meetings, staff. — (1) A site review panel shall be established to insure public input in the licensing process, to recommend to the director conditions which should be included in a siting license and to recommend to the director whether a particular facility should or should not be constructed, expanded or enlarged.

(2) A panel shall consist of eight (8) members to be appointed as follows:

(a) Three (3) members shall be the director of the department of environmental quality or his designee, the director of the Idaho transportation department or his designee and the director of the department of water resources or his designee.

(b) One (1) member shall be a public member appointed by the governor. The public member shall be an environmental professional, shall serve as chairman of the panel and shall be a voting member. A member who is a public member shall be appointed to serve on site review panels only until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(c) Two (2) members shall be appointed by the city council of the city located closest to or in which the commercial solid waste facility is proposed to be located, at least one (1) of whom shall be a resident of the city. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(d) Two (2) members shall be appointed by the county commission and be residents of the county where the commercial solid waste facility is proposed to be located. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(e) A person nominated to represent a city or county shall not have a conflict of interest, as that term is defined in [section 74-403, Idaho Code](#), or derive any economic gain as that term is defined in [section 74-403, Idaho Code](#), from the location or siting of the proposed commercial solid waste facility.

(3) The director shall notify the city council of the nearest city and the board of county commissioners of a siting license application filed with the department, and shall instruct the city and county to appoint the necessary members to a panel.

(4) Five (5) of the eight (8) members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of five (5) members of the panel shall constitute a legal action of the panel, provided that no meeting of the panel shall occur unless there are at least as many members present representing the city and county as there are representing the state and the public as appointed pursuant to subsections (2)(a) and (b) of this section. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(5) The director shall make staff available to assist a panel in carrying out its responsibilities.

(6) Members of the panel who are not state employees shall be entitled to receive compensation as provided in [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 39-7408B](#), as added by 1996, ch. 419, § 2, p. 1389; am. 2001, ch. 103, § 70, p. 253; am. 2015, ch. 141, § 98, p. 379.

STATUTORY NOTES

Cross References.

Director of department of environmental quality, § 39-105.

Director of department of water resources, § 42-1701.

Director of Idaho transportation department, § 40-503.

Open meetings law, § 74-201 et seq.

Amendments.

The 2015 amendment, by ch. 141, substituted “74-403” for “59-703” in two instances in paragraph (2)(e).

§ 39-7408C. Siting license application — Fee — Rules. — (1) An application for a siting license shall include:

- (a) The name and residence of the applicant;
- (b) The location of the proposed commercial solid waste facility;
- (c) Engineering, hydrogeologic and air quality information to indicate compliance with technical criteria as may be provided by law; (d) A description of the types of wastes proposed to be handled at the facility;
- (e) Information showing that harm to scenic, public health, historic, cultural or recreational values is not substantial or can be mitigated; (f) Information showing that the risk and impact of accident during transportation of solid waste is not substantial or can be mitigated; (g) Information showing that the impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated; (h) Financial information to indicate the applicant's financial capability to construct, operate and close a commercial solid waste facility.

(2) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(3) The application shall be accompanied by a siting license fee. The director shall establish by rule the scale for determining the siting license application fee. The fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be based on the cost to the department of reviewing the siting license application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon a siting license application.

(4) The director shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section.

History.

I.C., § 39-7408C, as added by 1996, ch. 419, § 2, p. 1389.

§ 39-7408D. Duties of the director relative to siting applications. —

(1) Upon receipt of a complete siting license application, the director or an authorized representative of the director shall:

(a) Notify the permanent panel members, the city and/or county in which the commercial solid waste facility is located or proposed to be located, the director of the department of fish and game, the director of the Idaho state police, and other state agencies as deemed appropriate by the director.

(b) Publish a notice that the application has been received, as provided in [section 60-109, Idaho Code](#), in a newspaper having major circulation in the county and the immediate vicinity of the proposed commercial solid waste facility. The notice shall contain a map indicating the location of the proposed commercial solid waste facility, a description of the proposed action and the location where the application may be reviewed. The notice shall describe the procedure by which the siting license may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (2) of [section 39-7408B, Idaho Code](#). Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) Within thirty (30) days after appointment of panel members, the panel shall meet to review and establish a timetable for the consideration of the draft site license.

(4) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed commercial solid waste facility, a description of the proposed action, and the location where the application for a siting license may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting license;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in [section 60-109, Idaho Code](#).

(5) Comment and input on the proposed commercial solid waste facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for thirty (30) days after the public hearing date. The public hearing shall be held in the same county as the proposed site. If the proposed site is adjacent to a city or populated area in a neighboring county, it is recommended that public hearings also be held in the neighboring county.

(6) The panel shall consider, but not be limited to, the following:

(a) The risk of the spread of disease or impact upon public health from improper treatment, storage, or incineration methods;

(b) The impact on local units of government where the proposed commercial solid waste facility is to be located in terms of health, safety, cost and consistency with local planning and existing development. The panel shall also consider city and county ordinances, permits or other requirements and their potential relationship to the proposed commercial solid waste facility;

(c) The nature of the probable environmental and public health impact;

(d) The financial capability of the applicant to construct, operate and close the commercial solid waste facility.

(7) The panel shall consider the concerns and objections submitted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the commercial solid waste facility. The panel may propose

conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(8) Within one hundred eighty (180) days after creation, the panel shall recommend to the director that the license be issued, issued with conditions, or rejected. The director shall act on a license application within sixty (60) days after receipt of the panel's recommendation. If the panel recommends conditions, a clear statement of the need for a condition must be submitted to the director. If the panel recommends rejection, a clear statement of the reasons for the denial must be submitted to the director.

(9) The director shall issue, issue with conditions or reject a siting license only as recommended by the siting panel. The director may reconvene a siting panel and request reconsideration of its original recommendation prior to the director's final action.

(10) An applicant or any person aggrieved by a decision of the director pursuant to this chapter may within sixty (60) days of the director's decision, and, after all remedies have been exhausted under the provisions of this chapter, seek judicial review under the procedures provided in chapter 52, title 67, Idaho Code, and may also seek de novo judicial review.

History.

I.C., § 39-7408D, as added by 1996, ch. 419, § 2, p. 1389; am. 2000, ch. 469, § 102, p. 1450.

STATUTORY NOTES

Cross References.

Director of department of fish and game, § 36-106.

Director of Idaho state police, § 67-2901.

Effective Dates.

Section 3 of S.L. 1996, ch. 419 declared an emergency. Approved March 20, 1996.

§ 39-7409. Standards for design. — (1) Applicability. These standards apply to new MSWLF units and lateral expansions of existing facilities as provided in [40 CFR 258.40](#).

(2) Liner designs. All owners or operators of MSWLF units shall use one (1) of the following designs: (a) Composite liner design. A liner as provided under [40 CFR 258.40\(b\)](#) and shall include a leachate collection system as provided under [40 CFR 258.40\(a\)\(2\)](#); or (b) Alternate liner design. A site-specific design based upon environmental performance, as allowed under [40 CFR 258.40\(a\)\(1\)](#) which will ensure that the concentration values listed in table 1, [40 CFR 258.40](#), or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall demonstrate consideration of site specific factors as provided in [40 CFR 258.40\(c\)](#) and shall include a leachate collection system as provided under [40 CFR 258.40\(a\)\(2\)](#); or (c) Arid design. A site-specific design based upon environmental performance, as allowed under [40 CFR 258.40\(a\)\(1\)](#) which will ensure that the concentration values listed in table 1, [40 CFR 258.40](#), or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall use both field collected data and predictions that maximize contaminant migration for demonstrating no potential for migration. This design will apply to locations having less than twenty-five (25) inches of precipitation annually, net evaporative losses greater than thirty (30) inches annually, and holding capacity in native soils greater than annual absorbance; and (i) solid waste is deposited no less than fifty (50) feet above the seasonal high level of ground water in the uppermost aquifer; (ii) the geologic formation beneath the site and above the uppermost aquifer must have capillary capacities greater than the projected maximum volume of leachate generated during the active life of the MSWLF unit; and (iii) “no potential for migration” is demonstrated when the geologic formation beneath the site and above the uppermost aquifer has sufficient hydrogeological characteristics and holding capacity adequate to contain all hazardous constituents generated during the active life, closure and post-closure care periods.

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set by a qualified professional by criteria contained in

40 CFR 258.40(d)(1) through (d)(8), inclusive, subject to approval by the director.

(4) Leachate discharge shall comply with permitted discharge requirements under the federal clean water act (PL 95-217) and federal storm water discharge regulations (40 CFR part 122).

History.

I.C., § 39-7409, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 9, p. 342.

STATUTORY NOTES

Federal References.

The federal clean water act, referred to in subsection (4) of this section, is compiled as 33 USCS § 1251 et seq.

§ 39-7410. Ground water monitoring design. — (1) Applicability. These requirements apply to MSWLF units except:

(a) When the MSWLF unit meets the conditions for exemption in [40 CFR 258.1\(f\)](#); provided however, that the director may, at his discretion, require monitoring of a MSWLF unit which meets the conditions for exemption in [40 CFR 258.1\(f\)](#), if necessary to protect ground water resources. If the director does require ground water monitoring of such MSWLF unit, a method other than the ground water monitoring wells required in this section and in [40 CFR 258.51 through 258.55](#) may be used to detect a release of contamination from the unit; or

(b) When suspended upon demonstration in accordance with [40 CFR 258.50](#) that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care periods when certified by a qualified professional and approved by the director.

(2) Ground water monitoring program. All monitoring programs shall be conducted in a manner consistent with the guidance of relevant portions of appendix F per the “Federal Register” of October 9, 1991. The schedule for compliance as provided by [40 CFR 258.50](#) shall apply unless an alternative schedule is approved by the director.

(a) A ground water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to conform with the requirements of [40 CFR 258.51\(a\)](#) and (d).

(b) A multiunit ground water monitoring system may be constructed instead of separate ground water monitoring systems for each MSWLF unit as provided in [40 CFR 258.51\(b\)](#).

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole as provided in [40 CFR 258.51\(c\)](#). Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata, and in accordance with Idaho department of

water resources, well construction standards and the monitoring well standards of the national ground water association.

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set as a function of site and monitoring program design subject to the approval of the director. The relevant point of compliance for purposes of MSWLF unit design, well location and corrective action shall be:

(a) Located within the flow pathway(s) predicted from the results of the hydrogeologic investigation;

(b) No more than one hundred fifty (150) meters downgradient from the waste management unit boundary;

(c) On contiguous property owned, or otherwise subject to possessory rights by the MSWLF owner;

(d) Shall be identified by the qualified professional on all reports and documents pertaining to analysis of ground water protection measures; and

(e) Determined in consideration of factors provided in [40 CFR 258.40\(d\)](#).

(4) Ground water characterization, sampling and analysis requirements.

(a) The ground water monitoring system must include sampling and analysis procedures consistent with [40 CFR 258.53](#).

(b) Monitoring wells shall be tested for the constituents listed in [40 CFR 258](#), appendix I, plus temperature, unless otherwise authorized by the director as provided in [40 CFR 258.54](#).

(c) Background values will be based on an independent sample from each well sampled at three (3) month intervals in a one (1) year period.

(5) Detection monitoring program.

(a) Detection monitoring is required throughout the active life and post-closure care period at MSWLF units as provided in [40 CFR 258.54](#) at all ground water monitoring wells as defined in [40 CFR 258.51\(a\)\(1\)](#) and [\(a\)\(2\)](#) for constituents listed in [40 CFR 258](#), appendix I.

(b) Each well shall be monitored on a semiannual basis after background characterization. Alternative constituents and sampling frequency may be approved by the director based upon considerations as defined in [40 CFR 258.54\(a\)\(2\)](#) and [\(b\)](#). Requests for alternative constituents or frequency shall be based on a report certified by a qualified professional.

(c) Each ground water sample event must include a determination of the ground water surface elevation, flow direction and rate.

History.

[I.C., § 39-7413](#), as added by 1992, ch. 331, § 1, p. 972; am. and redesign. 1993, ch. 139, § 11, p. 342; am. 1994, ch. 75, § 6, p. 156; am. 1997, ch. 11, § 1, p. 11.

STATUTORY NOTES

Prior Laws.

Former § 39-7410, which comprised [I.C., § 39-7410](#), as added by 1992, ch. 331, § 1, p. 972, was repealed by S.L. 1993, ch. 139, § 10, effective March 25, 1993.

Compiler's Notes.

This section was formerly compiled as § 39-7413.

The Idaho department of water resources well construction standards, referred to in paragraph (2)(c), may be found at [Idaho Administrative Code § 37.03.09](#).

The national groundwater association, referred to in paragraph (2)(c), provides guidance on management and protection of groundwater resources. See <http://ngwa.org>.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1997, ch. 11 declared an emergency. Approved February 7, 1997.

§ 39-7411. Design review procedure. — (1) Design of a MSWLF unit shall not be reviewed until site certification has been obtained. After obtaining site certification, an applicant shall produce design plans and specifications which comply with the design standards set forth in sections 39-7409 and 39-7410, Idaho Code. The responsibility for complying with said standards shall rest solely with the applicant of the site.

(2) An applicant may notify the director of its intent to initiate a MSWLF site design and meet with the director to discuss standards, schedule, design process to be used and particular concerns of the director.

(3) The applicant shall conduct aerial and cadastral surveys, relevant studies, and prepare a hydrogeologic report which will satisfy standards and other provisions in accordance with this chapter and applicable state regulations. Specific climatic data and verification of location restrictions shall be included.

(4) The applicant shall submit findings and a tentative design plan, including preliminary schematic design of environmental monitoring systems to the director as a result of the preliminary design investigation. The submittal initiates a twenty-eight (28) day period for department review and comment. Concurrent with the submittal to the director, the applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in [section 31-819, Idaho Code](#), in the county wherein the MSWLF would be located notifying the public that a preliminary design plan has been submitted to the director and is available for public review. The date of publication initiates a twenty-eight (28) day period for department review and public comment. Written public comments concerning the proposed design plan shall be compiled by the director. The compiled public comments received by the director and those generated by the director shall be transmitted to the owner, and the applicant if other than the owner, no more than thirty-five (35) days after the date of publication of the notice or seven (7) days after the end of the public comment period, whichever is later.

(5) When a response is received from the director, the applicant may submit the facility design, ground water monitoring program, and

specifications, in a final design report which addresses standards established by this chapter, applicable federal regulations and other relevant provisions of state law. Said submittal shall include a site-specific analysis of hydrogeologic conditions, location restrictions and other factors relevant to long-term site integrity, and shall address comments from the public and the director related to objective standards in the final design report. Said submittal shall be prepared by a qualified professional in a manner consistent with sound professional practices. The submittal of this final design report initiates a fifty-six (56) day period for the director's review.

(6) Concurrent with submittal to the director, the applicant shall release the final design report, including all supporting reports, plans and documentation, to the extent practicable, for public comment by placing it for inspection at every public library within the county where the proposed MSWLF would be located. Copies of the submittal shall be made available for possession, at the cost of duplication, at a public location in the county seat of the county where the proposed MSWLF unit would be located. The applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in [section 31-819, Idaho Code](#), in the county wherein the MSWLF would be located notifying the public that a final design report has been submitted to the director and is available for public review. Public comments shall be submitted, in writing, to the director within twenty-eight (28) days of the date of publication.

(7) No more than fifty-six (56) days after publication of notice of submittal, or twenty-eight (28) days after the close of an advertised public comment period, whichever is later, the director shall enter a decision either approving or disapproving the final design. The decision shall be in writing and shall make one (1) of the following findings:

- (a) Based upon the information submitted, design complies with applicable standards.
- (b) Based upon the information submitted, the design does not comply with applicable standards, setting forth with specificity the material standards not met or insufficiently documented.
- (c) Failure to comport with professional standards.

Failure of the director to respond to an applicant's request for approval in the manner provided herein shall constitute approval of the request. Construction shall not be initiated on a MSWLF unit until approval has been granted, except that construction prior to approval may be initiated prior to July 1, 1993, for a MSWLF unit which meets the design standard of [section 39-7409\(2\)\(a\), Idaho Code](#). The applicant shall publish notice of approval in a newspaper of general circulation when affirmative or defacto [*de facto*] approval is given.

(8) Upon entering a decision of disapproval, an automatic twenty-one (21) day stay of proceedings shall occur unless waived by the applicant. During the twenty-one (21) day stay, the director and the applicant may meet and confer to attempt to reconcile differences. At any point during that twenty-one (21) day period the director and applicant can reach an accord and approval can be granted, with construction authorized at that point. The applicant can tender a written waiver of this twenty-one (21) day reconciliation period which would initiate the requirement provided for in subsection (9) of this section. At any time in the review process or post-decision reconciliation process the applicant and director may mutually agree to extend the timeframes contained herein and may resort to mediation, arbitration, or binding arbitration to resolve differences as they mutually see fit.

(9) If differences are not reconciled in the period set forth in subsection (8) of this section, the director shall notify the owner that the design remains disapproved. Said notice of disapproval shall incorporate the rationale for disapproval contained in the original decision of disapproval, deleting any issues resolved in the post-decision reconciliation period.

(10) Following final action by the director the applicant may file a petition with the district court, with concurrent notice to the director, in the county where the proposed MSWLF would be located for expedited appellate review of the director's decision. The petition shall set forth the specific basis for the appeal and shall identify the legal and factual basis for contesting the disapproval by the director. The director shall submit a copy of the entire record upon which its disapproval has been based no more than fourteen (14) days after the date the applicant's petition for review has been filed. Only information which has been available during the design review process may be used in the judicial review process.

(11) All issues claimed as a basis of appeal by the applicant shall be addressed in a memorandum filed with the petition appealing disapproval by the director. The director shall submit a reply memorandum no later than fourteen (14) days after the applicant's petition for review has been filed.

(12) Upon the record, the applicable law, the memoranda of the respective parties, and such independent technical assistance as the court may find it necessary and appropriate to retain, the court shall evaluate the applicant's petition and the decision by the director and shall render a decision no more than twenty-one (21) days after the completed record, and accompanying memorandum, if one is filed, are submitted to the court by the director. The court shall sustain the director's disapproval action if it affirmatively finds that the record contains substantial evidence that the design does not comply with standards as specified pursuant to section 39-7412(7)(b) or (c), Idaho Code. If the court finds the disapproval is not supported by substantial evidence in the record, it shall reverse the director's action and remand the matter to the director with appropriate instructions.

(13) The procedure set forth in subsections (10) through (12) of this section are effective until January 1, 1994. On and after January 1, 1994, the applicant is entitled to judicial review pursuant to chapter 67, title 52 [chapter 52, title 67], Idaho Code. Upon waiver or expiration of the twenty-one (21) day reconciliation period, the director and the applicant shall stipulate to accelerated judicial review pursuant to court approval where the ordinary review period provided in chapter 67, title 52 [chapter 52, title 67], Idaho Code, may reasonably result in substantial increased costs to the applicant, potential violations of federal or state environmental laws or threats to the public health and environment.

History.

I.C., § 39-7411, as added by 1993, ch. 139, § 12, p. 342.

STATUTORY NOTES

Compiler's Notes.

Former § 39-7411 was amended and redesignated as § 39-7412 by § 13 of S.L. 1993, ch. 139.

The bracketed insertion near the end of subsection (7) was added by the compiler to correct the legal term.

The bracketed references “chapter 52, title 67, Idaho Code,” contained in subsection (13), were inserted by the compiler to correct the statutory reference.

§ 39-7412. Standards for operation. — Owners or operators of all MSWLF units shall:

(1) Implement a program for detecting and preventing disposal of regulated hazardous wastes as provided in [40 CFR 258.20](#);

(2) Provide for daily cover as provided in [40 CFR 258.21](#). Alternative materials or cover frequency other than daily cover may be used only as specified by the MSWLF plan of operation;

(3) Provide disease vector control as provided in [40 CFR 258.22](#);

(4) Implement a program of routine methane monitoring and control as provided in [40 CFR 258.23](#);

(5) Ensure that MSWLF units do not violate any ambient air quality standard or emission standard from any emission of landfill gases, combustion or any other emission associated with a MSWLF unit as provided in [40 CFR 258.24](#);

(6) Provide and control access as provided in [40 CFR 258.25](#);

(7) Design, construct and maintain a run-on/run-off control system as provided in [40 CFR 258.26](#) to:

(a) Prevent all the run-on of surface waters and other liquids resulting from a maximum flow of a twenty-five (25) year storm, or snowmelt into the active portion of the MSWLF unit;

(b) Control the collection of the run-off of surface waters and other liquids resulting from a twenty-four (24) hour, twenty-five (25) year storm, or snowmelt, whichever is greater, from the active portion and the closed portions of a MSWLF unit; and

(c) Prevent the discharge of pollutants into waters of the United States and the state of Idaho as defined in [40 CFR 258.27](#);

(8) Prohibit the disposal of noncontainerized liquids or sludges containing free liquids in MSWLF units except as provided in [40 CFR 258.28](#);

(9) Establish an operating and recordkeeping procedure as provided in [40 CFR 258.29](#); and

(10) Comply with operating procedures established by the board for implementation by the districts which are intended to assure operations which protect the public health and maintain the integrity of the landfill design.

(11) MSWLF units that dispose of greater than twenty (20) tons per day of municipal solid waste based on an annual average shall:

(a) Monitor daily climatic conditions. Monitoring shall include precipitation including snow, evaporation, evaporative water temperature, air temperature, wind speed and direction; and

(b) Weigh all incoming waste or provide an equivalent method of measuring waste tonnage capable of estimating total annual solid waste tonnage.

History.

[I.C., § 39-7411](#), as added by 1992, ch. 331, § 1, p. 972; am. and redesign. 1993, ch. 139, § 13, p. 342.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-7411.

Former § 39-7412 was amended and redesignated as § 39-7413 by § 14 of S.L. 1993, ch. 139.

CASE NOTES

Negligence per se.

In a suit by guardians of children who were killed in a landfill accident against the county operating the landfill, the district court erred in determining that the county's violations were not negligence per se and by applying the common law willful or wanton standard. [O'Guin v. Bingham County](#), 142 Idaho 49, 122 P.3d 308 (2005).

§ 39-7413. Operations plan review. — (1) Prior to operation of a MSWLF unit, an operations plan shall be submitted to the health district with jurisdiction. It shall be the responsibility of each applicant of a MSWLF unit to certify to the health district that the provisions of [section 39-7412, Idaho Code](#), have been complied with through development of an operating plan. No solid waste disposal facility shall accept waste without a current operating certificate from the health district with jurisdiction.

(2) The health district shall review operational plans in the same manner as the director reviews requests for site certification pursuant to [section 39-7408, Idaho Code](#). An applicant shall provide information in the operations plan in sufficient detail to show compliance with the provisions of [section 39-7412, Idaho Code](#), and required procedures adopted pursuant thereto. The same standards of review shall apply to an operations plan as apply to the site certification process. The health district shall accept certification by a qualified professional that standards of operation have been met upon presentation of the professional's certification of compliance and presentation of a written explanation of operational practices which will be undertaken to meet standards established in [section 39-7412, Idaho Code](#).

(3) If an operations plan provides for alternative operating criteria requiring approval by the director as provided in [40 CFR 258](#), the health district shall make a decision recommending approval or disapproval. Such plan shall be submitted by the health district to the director for his review. The submittal shall be accompanied by findings of fact and the recommendation from the health district.

(4) The director shall review the recommendation submitted by the health districts and shall make a decision to approve or disapprove. The director shall review recommendations for approval using the same standards of review provided in [section 39-7408\(2\)\(e\), Idaho Code](#).

History.

[I.C., § 39-7412](#), as added by 1992, ch. 331, § 1, p. 972; am. and redesign. 1993, ch. 139, § 14, p. 342; am. 1994, ch. 75, § 7, p. 156.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-7412.

Former § 39-7413 was amended and redesignated as § 39-7410 by § 11 of S.L. 1993, ch. 139.

§ 39-7414. Assessment monitoring and corrective action. — (1) Applicability. These standards apply whenever a statistically significant increase over background has been detected for one (1) or more constituents listed in **40 CFR 258**, appendix I or an alternative list approved in accordance with **40 CFR 258.54(a)(2)**.

(2) Assessment monitoring programs shall be performed in accordance with **40 CFR 258.55**.

(3) Assessment of corrective measures shall be performed in accordance with **40 CFR 258.56**.

(4) Selection of remedy shall be performed in accordance with **40 CFR 258.57**.

(5) Implementation of corrective action program shall be performed in accordance with **40 CFR 258.58**.

History.

I.C., § 39-7414, as added by 1993, ch. 139, § 15, p. 342.

STATUTORY NOTES

Prior Laws.

Former § 39-7414, which comprised **I.C., § 39-7414**, as added by 1992, ch. 331, § 1, p. 972, was repealed by S.L. 1993, ch. 139, § 10, effective March 25, 1993.

§ 39-7415. Standards for closure. — (1) Applicability. These standards apply to all MSWLF units that receive wastes on or after October 9, 1993, except as provided by [40 CFR 258](#). MSWLF units that accept waste after October 9, 1991, but cease to accept waste prior to October 9, 1993, shall at a minimum comply with subsections (2)(a) and (3) of this section in addition to the “sanitary landfill closure guidance” criteria as adopted by the health district.

(2) Cover designs. Owners or operators of MSWLF units shall install one (1) of the following final cover systems:

(a) A cover as provided under [40 CFR 258.60\(a\)](#); or

(b) The cover material must be fine-grained with intrinsic permeability no greater than 1×10^{-3} cm/sec and a minimum thickness of twenty-four (24) inches; and

(i) Have capillary holding capacity greater than the projected maximum accumulated volume of water as determined by utilization of accepted water balance methodology based on local or regional twenty-five (25) year climatic records;

(ii) Annual precipitation is less than twenty-five (25) inches with net evaporative losses greater than thirty (30) inches annually;

(iii) The top six (6) inches of the cover shall be capable of sustaining shallow rooted native plant growth; and

(iv) This design shall demonstrate consideration of site specific factors as provided in [40 CFR 258.60\(b\)](#); or

(c) As provided in [40 CFR 258.60\(b\)](#).

(3) The final grade of slopes shall be greater than two percent (2%) unless otherwise supported by the post closure plan and uses approved by the health district, and the grade of side slopes not more than thirty-three percent (33%).

(4) Closure plan preparation, placement in operating record, notice of intent to close, time requirements for commencement and completion of

closure activities, certification, deed notation and removal of deed notation shall be conducted as provided in 40 CFR 258.60(c) through (j), inclusive. The deed notation and removal of deed notation shall comply with the uniform environmental covenants act, chapter 30, title 55, Idaho Code.

History.

I.C., § 39-7415, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 16, p. 342; am. 1994, ch. 75, § 8, p. 156; am. 2010, ch. 99, § 2, p. 191.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 99, added the last sentence in subsection (4).

§ 39-7416. Standards for post closure care. — (1) Applicability. Post closure maintenance standards apply to all MSWLF units that receive wastes on or after October 9, 1993, except as provided by **40 CFR 258.1**.

(2) Post closure care shall be conducted as provided under **40 CFR 258.61**.

History.

I.C., § 39-7416, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 17, p. 342; am. 1994, ch. 75, § 9, p. 156.

§ 39-7417. Financial assurance for closure, post closure care and corrective action. — (1) Applicability. These requirements shall apply to new MSWLF units, existing MSWLF units and lateral expansions except as exempted in [40 CFR 258.1\(d\)](#) and [258.70\(a\)](#).

(2) The requirements of this section are effective April 9, 1995, except for MSWLF units meeting the conditions of [40 CFR 258.1\(f\)\(1\)](#), in which case the effective date is October 9, 1995, or at such later date upon subsequent amendment of [40 CFR 258.70 through 258.74](#).

(3) All MSWLF units shall be underwritten by financial assurance provisions as provided by the following:

- (a) Closure as provided in [40 CFR 258.71](#);
- (b) Post closure care as provided in [40 CFR 258.72](#); and
- (c) Corrective action as provided in [40 CFR 258.73](#).

(4) The financial assurance mechanisms provided for MSWLF units shall include any mechanism or a combination of mechanisms meeting the criteria of [40 CFR 258.74](#).

(5) Counties may use available borrowing capability through registered warrants for a prearranged amount and preapproved by a lending institution as a financial mechanism to assure assessment monitoring and corrective action needs.

(6) Subdivisions of the state may use any method provided by law to meet the requirements of this section.

(7) MSWLF units owned or operated by subdivisions of the state that qualify under [40 CFR 258.74\(f\)](#) may include any mechanism allowed to them upon adoption and publication.

(8) Financial assurance funds for MSWLF units not located on federal or state lands shall be deposited in a county trust fund in the county in which the MSWLF unit is located. The county shall act as the trustee for the trust funds, and as named coprincipal for surety bonds, letters of credit, and insurance. As trustee, the county may require an independent audit of the

adequacy of the financial assurance but shall not become liable for financial assurance except in the case of default as otherwise defined by federal and state law.

History.

I.C., § 39-7417, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 18, p. 342; am. 1994, ch. 75, § 10, p. 156.

STATUTORY NOTES

Compiler's Notes.

The effective date of the requirements of this section, pursuant to the 1996 amendment of 40 C.F.R. § 258.70, referred to in subsection (2), are April 9, 1997, and October 9, 1997, for MSWLF units meeting the conditions of 40 C.F.R. § 258.1(f)(1).

Effective Dates.

Section 11 of S.L. 1994, ch. 75 declared an emergency. Approved March 9, 1994.

§ 39-7418. Modifications to sites approved under this chapter. — (1) The following classes of modifications to approved sites shall require that an owner or operator amend the approved design or ground water monitoring program:

- (a) Lateral expansion outside the approved waste management unit boundary design;
- (b) Unpredictable change affecting any environmental monitoring program;
- (c) Change of liner design; or
- (d) A modification of the design or operation due to initiation of corrective action and remediation.

(2) The scope of new investigations and plan amendment shall be defined by the owner, director and health district before any modification to the decision is begun. Only those stages of the applicable approval process affected by the request for modification shall be required.

History.

I.C., § 39-7418, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 19, p. 342.

§ 39-7419. Inspections. — (1) All MSWLF units shall be subject to routine inspection by the county, director and health district in accordance with relevant provisions of the Idaho Code.

(2) At intervals of not less than three (3) years, nor more than five (5) years, the owner, county, director and health district shall jointly conduct a comprehensive review of the MSWLF unit for provisions contained in this chapter, technical guidance, other provisions, and the plan for design and operation, as amended. A record of the review shall be placed in the operating record of the MSWLF unit which shall be maintained by the owner and the health district with jurisdiction. Operating procedures shall be recertified at intervals of no more than three (3) years.

History.

I.C., § 39-7419, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 20, p. 342.

§ 39-7420. Violations and enforcement. — (1) Failure to comply with the requirements established in this chapter, requirements of rules established pursuant to this chapter, and reasonable conditions of approval granted pursuant to this chapter shall be unlawful. Particularly with respect to siting and operation of a municipal solid waste landfill to satisfy the requirements of chapter 44, title 31, Idaho Code, enforcement should focus upon remediation of deficiencies, rather than punishment. Penalties should be imposed where practices show disregard for protection of human health, safety and the environment.

(2) Each public agency with responsibility for enforcement of requirements established in this chapter may inspect, monitor and employ such methods of enforcement as they may be empowered to use by statute or local ordinance.

(a) The director may apply the provisions of [section 39-108, Idaho Code](#), to insure compliance.

(b) The respective health districts or the several counties may employ the use of negotiated compliance agreements in addition to civil legal remedies and misdemeanor criminal penalties otherwise authorized in order to obtain compliance with requirements established herein.

(3) Where more than one (1) public entity undertakes enforcement efforts to obtain compliance with the provisions of this chapter, enforcement efforts should be coordinated to the greatest extent possible to minimize conflict among requirements and costs of compliance.

(4) A private right of action in behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or regulation authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

(5) If a district fails to carry out responsibilities established in this chapter, the director may assume the authority otherwise to be implemented by a district.

History.

I.C., § 39-7420, as added by 1992, ch. 331, § 1, p. 972; am. 1993, ch. 139, § 21, p. 342.

STATUTORY NOTES

Compiler's Notes.

Section 24 of S.L. 1993, ch. 139 read: "If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 4 of S.L. 1992, ch. 331 declared an emergency. This section became law without the governor's signature on April 15, 1992.

Section 25 of S.L. 1993, ch. 139 declared an emergency. Approved March 25, 1993.

CASE NOTES

Review.

Site selection by the county commissioners is a significant step in the process of selecting a building and operating a landfill and falls within the "approval authorized" contemplated by subsection (4) of this section, and, therefore, landowners are permitted to seek judicial review of the site selection under the administrative procedures act. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

§ 39-7421. Research, development and demonstration permits. — (1) The provisions of [42 U.S.C. 6945\(c\)\(1\)\(B\)](#) and [40 CFR 258](#) allow the administrator of the United States environmental protection agency to approve state research, development and demonstration permit programs.

(2) The director shall initiate the process outlined in [40 CFR 239](#) by which the state may receive authorization to issue research, development and demonstration (RDD) permits in compliance with [40 CFR 258.4](#) at such time as:

(a) The department receives a request from any individual who expresses an intent to apply for an RDD permit; and

(b) The department and requesting individual enter into a written agreement in which the requesting individual agrees to reimburse the department for the reasonable and necessary cost to make such application.

(3) Upon receipt of state authorization to issue such permits, the director may issue an RDD permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria:

(a) The run-on control systems required by [section 39-7412\(7\)\(a\), Idaho Code](#); and

(b) The liquid restrictions in [section 39-7412\(8\), Idaho Code](#).

(4) Any permit issued under subsection (3) of this section shall include the following terms and conditions:

(a) The MSWLF unit shall have a leachate collection system designed and constructed to maintain less than a thirty (30) centimeter depth of leachate on the liner;

(b) Any liquids to be recirculated, injected or otherwise placed in the MSWLF unit shall be appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process and shall be approved by the director;

(c) The MSWLF unit owner or operator shall install and operate a landfill gas collection and control system in accordance with emission control requirements as specified in 40 CFR part 60, and when collected in economically feasible volumes, landfill gas shall be used for energy generation.

(5) Upon receipt of state authorization to issue such permits, the director may issue an RDD permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of 40 CFR 258.60 (a)(1), (a)(2) and (b)(1) provided the landfill owner or operator demonstrates that the infiltration of liquid will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed thirty (30) centimeters.

(6) Any permit issued under the provisions of this section shall include terms and conditions at least as protective as the criteria for MSWLFs to assure protection of human health and the environment. Such permits shall:

(a) Provide for the construction and operation of such facilities as necessary, for not longer than three (3) years, unless renewed as provided in subsection (8) of this section;

(b) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(c) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the director with respect to the operation of the facility;

(d) Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to the director showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit. Annual reports shall be submitted to the director within three (3) months after the anniversary date of the approved permit or permit renewal; and

(e) Require compliance with all criteria in chapter 74, title 39, Idaho Code, except as permitted under this section.

(7) The director may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the director determines that the overall goals of the project are not being attained including, but not limited to, protection of human health or the environment.

(8) Any permit issued under the provisions of this section shall not exceed three (3) years and each renewal of a permit shall not exceed three (3) years.

(a) The total term for a permit for a project, including renewals, shall not exceed twelve (12) years.

(b) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the director determines necessary for permit renewal.

(c) Owners or operators requesting permit renewal shall submit the permit renewal application to the director at least six (6) months prior to the existing permit expiration date.

(9) It shall be unlawful to begin construction to implement or otherwise utilize the exemptions provided in this section without first receiving a permit from the director. Permit applications will be processed in the following manner:

(a) The director shall review the RDD permit application and each subsequent permit renewal in the same manner as the director reviews requests for design approval pursuant to [section 39-7411, Idaho Code](#). An applicant shall provide information in the permit application in sufficient detail to address design, operating, closure, postclosure and financial assurance requirements.

(b) Each permit application and permit renewal application shall require the owner or operator to certify to the director that the information contained in the application is, to the best of his or her knowledge,

accurate and true, and the MSWLF unit is in compliance with applicable law.

(10) Permit review and oversight costs incurred by the department of environmental quality, or “department,” and health district shall be reimbursed by the applicant or permittee. Reimbursable review and oversight costs shall include, but are not limited to:

(a) Reasonable costs associated with the director’s review of a permit application submitted pursuant to this section, including department staff time and the cost of goods and services contracted by the department in performance of the activities described in this section;

(b) Reasonable costs associated with the health district’s review of portions of a permit application submitted pursuant to this section when such review is delegated to the health district by statute, rule, or agreement with the director;

(c) Reasonable costs associated with the department’s and health district’s oversight of permitted RDD units, including inspections and the review of annual reports, monitoring, and testing results required pursuant to this section or required by permit, and the processing of permit amendments and terminations; and

(d) All other reasonable and necessary costs of actions taken by the department pursuant to this section.

(11) Reimbursable review and oversight costs incurred by the department and health district, as defined in subsection (10) of this section, shall be reimbursed as follows:

(a) Each permit application submitted to the director pursuant to this section shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250) and an estimation of reimbursable review and oversight costs the department and health district may incur associated with the review of the permit application and oversight of the permit. Each permit renewal application submitted to the director pursuant to this section shall be accompanied by a nonrefundable fee of one hundred dollars (\$100) and an estimation of reimbursable review and oversight costs the department and health district may incur associated with the review and oversight of the permit renewal.

(b) If the department, in consultation with the health district, determines that the applicant's estimation of reimbursable review and oversight costs is accurate, and the submission of such funds will adequately reimburse the department and the health district for the cost of all review and oversight activities associated with that permit application or renewal application, the department shall notify the applicant, and the applicant shall submit to the department the full amount, or an installment deposit in the amount required pursuant to this subsection.

(c) If the department, in consultation with the health district, determines that the applicant's estimation of reimbursable review and oversight costs is not accurate, and the submission of such funds will not adequately reimburse the department and the health district for the cost of all review and oversight activities associated with that permit application or renewal application, the department shall notify the applicant and the application shall be returned to the applicant.

(d) Upon receipt of funds in the amount estimated by the applicant and concurred to by the department and health district, or receipt of an installment deposit in the amount required under this subsection, the director shall initiate permit application review or permit renewal review.

(e) Once the department and the health district concur with an applicant's estimation of reimbursable review and oversight costs, and the department provides the applicant notice thereof, a permit applicant or permit renewal applicant may submit to the department the reimbursement funds in their entirety or an installment deposit of two thousand five hundred dollars (\$2,500). Should funding be required for costs incurred in excess of the initial two thousand five hundred dollar (\$2,500) deposit, the department shall notify the applicant of required successive deposits in the amount of two thousand five hundred dollars (\$2,500). The department shall pass along funds collected on behalf of the health district for reimbursable review and oversight costs incurred by such district within sixty (60) days of receipt of such funds from the applicant, or within sixty (60) days of receipt of a certified request for such funds from the health district, whichever is later. Any unused portion of the reimbursement funds, deposit, or successive deposit shall be returned to the applicant within sixty (60) days of the director's final decision to issue or deny a permit or permit renewal pursuant to this

section. If the applicant fails to submit a successive deposit, the department shall suspend review of the permit application or renewal application, and the director shall be relieved of any applicable statutory or regulatory permit application or renewal application review deadlines during the review suspension.

(f) The director shall, as a condition of renewal, require renewal applicants to reimburse the department for previously uncaptured reimbursable permit review and oversight costs incurred by the department or health district during the prior permit term.

(g) Upon request, the department shall provide documentation to the applicant to aid in the development of the applicant's estimation of reimbursable review and oversight costs or to support the department's claims and any health district claims for such reimbursement.

(h) Funds submitted to the department pursuant to this section shall not be returned if a permit application is terminated, withdrawn, returned, or denied unless the funds, or some portion thereof, have not been used by the department or health district as of the date of the termination, withdrawal, return, or denial.

(12) A permit issued pursuant to this section may be transferred only to a new owner or operator of the permitted MSWLF. The new owner or operator shall submit to the director in writing, a request for permit transfer. The request shall include a statement that the new owner or operator will comply with all terms and conditions of the permit. Upon transfer of the permit, the new owner or operator shall be responsible for compliance with all terms and conditions of the permit, and shall be subject to enforcement of such terms and conditions.

(13) The following MSWLF units are not eligible for a permit issued pursuant to this section:

(a) MSWLF units operating under an exemption set forth in [section 39-7409\(2\)\(c\), Idaho Code](#).

(b) MSWLF units operating under an exemption set forth in [40 CFR 258.1\(f\)](#).

(c) MSWLF units that dispose of twenty (20) tons of solid waste per day or less, based on an annual average, are not eligible for a variance from

40 CFR 258.60(b)(1), except in accordance with 40 CFR 258.60(b)(3).

(d) MSWLF units that have exceeded ground water protection standards at statistically significant levels as specified in section 39-7410(4)(a), Idaho Code, from any waste unit on site and have not implemented a remedy in accordance with section 39-7414, Idaho Code, prior to RDD permit application submittal.

(e) MSWLF units that have landfill gas concentration exceedances, as specified in section 39-7412(4), Idaho Code, from any waste unit on site and have not implemented a remedy in accordance with section 39-7412(4), Idaho Code, prior to RDD permit application submittal.

(14) Owners or operators of MSWLF units circulating leachate or gas condensate derived from the MSWLF unit in compliance with section 39-7412(8), Idaho Code, and 40 CFR 258.28, and not implementing or otherwise utilizing an exemption under this section, are not required to comply with the requirements of this section.

(15) An applicant or permittee may appeal any final decision made by the director under this section by filing a request for hearing in accordance with rules promulgated by the department governing contested cases, or in the absence of such rules, in accordance with the procedures in chapter 52, title 67, Idaho Code.

History.

I.C., § 39-7421, as added by 2010, ch. 146, § 1, p. 309.

STATUTORY NOTES

Compiler's Notes.

Former § 39-7421 was amended and redesignated as § 39-7402A by § 3 of S.L. 1993, ch. 139.

The letters "RDD" enclosed in parentheses so appeared in the law as enacted.

Idaho Code Ch. 75

• [Title 39](#)», « [Ch. 75](#) »

Chapter 75

ADOPTION AND MEDICAL ASSISTANCE

Sec.

39-7501. Interstate compact on adoption and medical assistance.

39-7502. Compact administrator.

39-7503. Supplementary agreements and financial arrangements.

39-7504. Financial responsibility of parents of estate.

39-7505. Responsibilities of enforcement.

§ 39-7501. Interstate compact on adoption and medical assistance. —

The interstate compact on adoption and medical assistance is hereby enacted into law and entered into by the state of Idaho as a party, and is in full force and effect between the state and other states joining the agreement in accordance with its terms.

INTERSTATE COMPACT ON ADOPTION AND MEDICAL
ASSISTANCE

ARTICLE I. FINDINGS

The states which are parties to this Compact find that:

- (a) In order to obtain adoptive families for children with special needs, states must assure prospective adoptive parents of substantial assistance (usually on a continuing basis) in meeting the high costs of supporting and providing for the special needs and the services required by such children.
- (b) The states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability, and general support and encouragement required by such children can be best, and often only, obtained in family homes with a normal parent-child relationship.
- (c) The states obtain fiscal advantages from providing adoption assistance because the alternative is for the states to bear the higher cost of meeting all the needs of children while in foster care.
- (d) The necessary assurances of adoption assistance for children with special needs, in those instances where children and adoptive parents live in states other than the one undertaking to provide the assistance, include the establishment and maintenance of suitable substantive guarantees and workable procedures for interstate cooperation and payments to assist with the necessary costs of child maintenance, the procurement of services, and the provision of medical assistance.

ARTICLE II. PURPOSES

The purposes of this Compact are to:

- (a) Strengthen protections for the interests of children with special needs on behalf of whom adoption assistance is committed to be paid, when such children are in or move to states other than the one committed to provide adoption assistance.
- (b) Provide substantive assurances and operating procedures which will promote the delivery of medical and other services to children on an interstate basis through programs of adoption assistance established by the laws of the states which are parties to this Compact.

ARTICLE III. DEFINITIONS

As used in this Compact, unless the context clearly requires a different construction:

- (a) “Child with special needs” means a minor who has not yet attained the age at which the state normally discontinues children’s services, or a child who has not yet reached the age of 21 where the state determines that the child’s mental or physical handicaps warrant the continuation of assistance beyond the age of majority, for whom the state has determined the following:
 - 1. That the child cannot or should not be returned to the home of his or her parents;
 - 2. That there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical condition or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance;
 - 3. That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance.
- (b) “Adoption assistance” means the payment or payments for the maintenance of a child which are made or committed to be made

pursuant to the adoption assistance program established by the laws of a party state.

- (c) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of the United States.
- (d) “Adoption assistance state” means the state that is signatory to an adoption assistance agreement in a particular case.
- (e) “Residence state” means the state in which the child is a resident by virtue of the residence of the adoptive parents.
- (f) “Parents” mean either the singular or plural of the word “parent”.

ARTICLE IV. ADOPTION ASSISTANCE

- (a) Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws.
- (b) The adoption assistance, medical assistance, and other services and benefits to which this Compact applies are those provided to children with special needs and their adoptive parents from the effective date of the adoption assistance agreement.
- (c) Every case of adoption assistance shall include a written adoption assistance agreement between the adoptive parents and the appropriate agency of the state undertaking to provide the adoption assistance. Every such agreement shall contain provisions for the fixing of actual or potential interstate aspects of the assistance so provided as follows:
 - 1. An express commitment that the assistance so provided shall be payable without regard for the state of residence of the adoptive parents, both at the outset of the agreement period and at all times during its continuance;
 - 2. A provision setting forth with particularity the types of care and services toward which the adoption assistance state will make payments;

3. A commitment to make medical assistance available to the child in accordance with Article V of this Compact;
 4. An express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that is enforceable by any or all of them; and
 5. The date or dates upon which each payment or other benefit provided thereunder is to commence, but in no event prior to the effective date of the adoption assistance agreement.
- (d) Any services or benefits provided for a child by the residence state and the adoption assistance state may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other, as well as the beneficiaries of adoption assistance agreements, in assuring prompt and full access to all benefits expressly included in such agreements. It is further recognized and agreed that, in general, all children to whom adoption assistance agreements apply will be eligible for benefits under the child welfare, education, rehabilitation, mental health, and other programs of their state of residence on the same basis as other resident children.
- (e) Adoption assistance payments on behalf of a child in another state shall be made on the same basis and in the same amounts as they would be made if the child were living in the state making the payments, except that the laws of the adoption assistance state may provide for the payment of higher amounts.

ARTICLE V. MEDICAL ASSISTANCE

- (a) Children for whom a party state is committed, in accordance with the terms of an adoption assistance agreement to provide federally aided medical assistance under Title XIX of the Social Security Act, are eligible for such medical assistance during the entire period for which the agreement is in effect. Upon application therefor, the adoptive parents of a child who is the subject of such an adoption assistance agreement shall receive a medical assistance identification document made out in the child's name. The identification shall be issued by the medical assistance program of the residence state and shall entitle the child to the same

benefits, pursuant to the same procedures, as any other child who is covered by the medical assistance program in that state, whether or not the adoptive parents are themselves eligible for medical assistance.

- (b) The identification document shall bear no indication that an adoption assistance agreement with another state is the basis for its issuance. However, if the identification is issued pursuant to such an adoption assistance agreement, the records of the issuing state and the adoption assistance state shall show the fact, and shall contain a copy of the adoption assistance agreement and any amendment or replacement thereof, as well as all other pertinent information. The adoption assistance and medical assistance programs of the adoption assistance state shall be notified of the issuance of such identification.
- (c) A state which has issued a medical assistance identification document pursuant to this Compact, which identification is valid and currently in force, shall accept, process and pay medical assistance claims thereon as it would with any other medical assistance claims by eligible residents.
- (d) The federally aided medical assistance provided by a party state pursuant to this Compact shall be in accordance with paragraphs (a) through (c) of this Article. In addition, when a child who is covered by an adoption assistance agreement is living in another party state, payment or reimbursement for any medical services and benefits specified under the terms of the adoption assistance agreement, which are not available to the child under the Title XIX medical assistance program of the residence state, shall be made by the adoption assistance state as required by its law. Any payments so provided shall be of the same kind and at the same rates as provided for children who are living in the adoption assistance state. However, where the payment rate authorized for a covered service under the medical assistance program of the adoption assistance state exceeds the rate authorized by the residence state for that service, the adoption assistance state shall not be required to pay the additional amounts for the services or benefits covered by the residence state.
- (e) A child referred to in paragraph (a) of this Article, whose residence is changed from one party state to another party state shall be eligible for federally aided medical assistance under the medical assistance program of the new state of residence.

ARTICLE VI. COMPACT ADMINISTRATION

- (a) In accordance with its own laws and procedures, each state which is a party to this Compact shall designate a Compact Administrator and such Deputy Compact Administrator as it deems necessary. The Compact Administrator shall coordinate all activities under this Compact within his or her state. The Compact Administrator shall also be the principal contact for officials and agencies within and without the state for the facilitation of interstate relations involving this Compact and the protection of benefits and services provided pursuant thereto. In this capacity, the Compact Administrator will be responsible for assisting child welfare agency personnel from other party states and adoptive families receiving adoption and medical assistance on an interstate basis.
- (b) Acting jointly, the Compact Administrators shall develop uniform forms and administrative procedures for the interstate monitoring and delivery of adoption and medical assistance benefits and services pursuant to this Compact. The forms and procedures so developed may deal with such matters as:
1. Documentation of continuing adoption assistance eligibility;
 2. Interstate payments and reimbursements; and
 3. Any and all other matters arising pursuant to this Compact.
- (c)(1) Some or all of the parties to this Compact may enter into supplementary agreements for the provision of or payment for additional medical benefits and services, as provided in Article V(d); for interstate service delivery, pursuant to Article IV(d); or for matters related thereto. Such agreements shall not be inconsistent with this Compact, nor shall they relieve the party states of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and the terms of this compact.
- (2) Administrative procedures or forms implementing the supplementary agreements referred to in paragraph (c)(1) of this Article may be developed by joint action of the Compact Administrators of those states which are party to such supplementary agreements.

- (d) It shall be the responsibility of the Compact Administrator to ascertain whether and to what extent additional legislation may be necessary in his or her own state to carry out the provisions of this Article IV or any supplementary agreements pursuant to this Compact.

ARTICLE VII. JOINDER AND WITHDRAWAL

- (a) This Compact shall be open to joinder by any state. It shall enter into force as to a state when its duly constituted and empowered authority has executed it.
- (b) In order that the provisions of this Compact may be accessible to and known by the general public, and so that they may be implemented as law in each of the party states, the authority which has executed the Compact in each party state shall cause the full text of the Compact and a notice of its execution to be published in his or her state. The executing authority in any party state shall also provide copies of the Compact upon request.
- (c) Withdrawal from this Compact shall be by written notice, sent by the authority which executed it, to the appropriate officials of all other party states, but no such notice shall take effect until one year after it is given in accordance with the requirements of this paragraph.
- (d) All adoption assistance agreements outstanding and to which a party state is a signatory at the time when its withdrawal from this compact takes effect shall continue to have the effects given to them pursuant to this Compact until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by this Compact, and the withdrawing state shall continue to administer the Compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the Constitution of the United States or of any party state, or where the applicability thereof to any government, agency, person, or

circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.

I.C., § 39-7501, as added by 1994, ch. 69, § 1, p. 141.

STATUTORY NOTES

Federal References.

Title XIX of the Social Security Act, referred to in subsection (a) of Article V, is compiled as 42 USCS §§ 1396 to 1396v.

Compiler's Notes.

For more on the interstate compact on adoption and medical assistance, see <http://aaicama.org>.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-7502. Compact administrator. — Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall develop guidelines and procedures to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History.

I.C., § 39-7502, as added by 1994, ch. 69, § 1, p. 141.

STATUTORY NOTES

Compiler's Notes.

For association of administrators for the interstate compact on adoption and medical assistance, see <http://aaicama.org>.

§ 39-7503. Supplementary agreements and financial arrangements.

— The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service of this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. The compact administrator, subject to the approval of the board of examiners, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History.

I.C., § 39-7503, as added by 1994, ch. 69, § 1, p. 141.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

Compiler's Notes.

For association of administrators for the interstate compact on adoption and medical assistance, see <http://aaicama.org>.

§ 39-7504. Financial responsibility of parents of estate. — The compact administrator shall take appropriate action pursuant to existing law to effect the recovery from relevant parents of estate, at the option of said administrator, of any and all costs expended by the state, or any of its subdivisions, with respect to Idaho children handled under said compact.

History.

I.C., § 39-7504, as added by 1994, ch. 69, § 1, p. 141; am. 2012, ch. 257, § 11, p. 709.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 257, deleted “and guardians” and “or guardians” following “parents” in the section heading and in the text.

§ 39-7505. Responsibilities of enforcement. — The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdiction.

History.

I.C., § 39-7505, as added by 1994, ch. 69, § 1, p. 141.

Chapter 76

PUBLIC DRINKING WATER SYSTEM LOANS

Sec.

39-7601. Authorization of loans.

39-7602. Disbursements by the director of loans to public water systems —
Limitations on loans — Rules — Approval of the attorney general —
Audit of disbursements.

39-7603. Investment of funds in drinking water loan account [fund].

39-7604. Appropriations for the drinking water loan account [fund] —
Purpose of chapter.

39-7605. Limits on the amounts and loans.

39-7606. Public water system supervision fund.

§ 39-7601. Authorization of loans. — The director is hereby authorized to make loans at or below market interest rates, as funds are available, to any eligible public water system to assist the public water system or which will facilitate their compliance with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of this chapter.

History.

I.C., § 39-7601, as added by 1997, ch. 26, § 2, p. 36.

§ 39-7602. Disbursements by the director of loans to public water systems — Limitations on loans — Rules — Approval of the attorney general — Audit of disbursements. — (1) There is hereby created the drinking water loan fund. The department of environmental quality shall use moneys from this fund only for providing loans, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the drinking water loan fund, or for other financial assistance authorized in this chapter or by federal law to community water systems and nonprofit noncommunity water systems. Financial assistance under this section may be used by a public water system only for project expenditures, not including monitoring, operation and maintenance expenditures, which will facilitate compliance with national primary drinking water standards applicable to the system or which will significantly further the health protection objectives of this chapter. The funds may also be used for public water systems using constructed conveyances and not piped water systems if they meet the requirements of the safe drinking water act amendments of 1996 and the director determines that the water provided for residential or similar uses for cooking, drinking and bathing is centrally treated or treated at the point of entry to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. The funds shall not be used for the acquisition of real property or an interest in real property unless the acquisition is integral to the project authorized by this section and the purchase is from a willing seller.

(2)(a) Except as provided in subsection (2)(b) of this section, no loan assistance shall be provided to a public water system that:

- (i) Does not have the technical, managerial and financial capability to ensure compliance with the requirements of this chapter; or
- (ii) Is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(b) A public water system referenced in subsection (2)(a) of this section may receive assistance under this section if:

- (i) The assistance will ensure compliance, and

(ii) If subsection (2)(a)(i) of this section applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply or other procedures, and then only if the director determines that the measures are necessary to ensure that the system has the technical, managerial and financial capability to comply with the requirements of this chapter and the safe drinking water act amendments of 1996.

(3) Except as otherwise prohibited by state law, the amounts deposited into the drinking water loan fund under this chapter may be used only for the following:

(a) To make loans on the conditions that:

(i) The interest rate for each loan is less than or equal to the market interest rate,

(ii) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made and each loan will be fully amortized not later than twenty (20) years after completion of the project, except that in the case of a disadvantaged community, an extended term for a loan may be allowed if it terminates not later than thirty (30) years after the date the project is completed, and does not exceed the design life of the project,

(iii) The recipient of each loan will establish a dedicated source of revenue, or, in the case of a privately owned system, demonstrate that there is adequate security, for the repayment of the loan, and

(iv) The drinking water loan fund will be credited with all payment of principal and interest on each loan;

(b) To buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the state at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the

proceeds of the sale of the bonds will be deposited into the drinking water loan fund; and

(d) To earn interest on the amounts deposited into the drinking water loan fund.

(4) For every agreement between the state and the federal government by which funds are made available, the state shall deposit in the drinking water loan fund an amount equal to at least twenty percent (20%) of the total amount of the grant to be made to the state on or before the dates on which grant payments are made to the state.

(5) The director may promulgate rules necessary for the making and enforcing of loan contracts hereunder and for establishing procedures to be followed in applying for state loans or loan subsidies or training assistance herein authorized as shall be necessary for the effective administration of the loan program.

(6) All contracts entered into pursuant to this chapter shall be subject to approval by the attorney general as to form. All disbursements by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

History.

I.C., § 39-7602, as added by 1997, ch. 26, § 2, p. 36; am. 2001, ch. 103, § 71, p. 253.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Department of environmental quality, § 39-101 et seq.

Federal References.

The safe drinking water act amendments of 1996, referred to in subsections (1) and (2)(b)(ii), are compiled as **42 U.S.C. § 300f et seq.**

RESEARCH REFERENCES

A.L.R. — Validity, Construction, and Application of Lead Limitations and “Lead and Copper” **Rule of Safe Drinking Water Act. 16 A.L.R. Fed. 3d 3.**

Citizen’s Cause of Action Under Safe Drinking Water Act, **42 U.S.C. § 300j-8. 16 A.L.R. Fed. 3d 4.**

§ 39-7603. Investment of funds in drinking water loan account [fund]. — Surplus moneys in the drinking water loan account [fund] established by [section 39-7602, Idaho Code](#), shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in [section 67-1210, Idaho Code](#). Interest received on all such investments shall be paid into the account [fund]. The account [fund] shall have paid into it: federal funds which are received by the state to provide for drinking water loans to public water systems together with the required state matching funds; all principal and interest repayments of loans made pursuant to this chapter; all donations and grants from any source which may be used for the provisions of this chapter; fund transfers from the wastewater facility loan account; and any moneys which may hereafter be provided by law.

History.

[I.C., § 39-7603](#), as added by 1997, ch. 26, § 2, p. 36; am. 2014, ch. 59, § 3, p. 141.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Wastewater facility loan account, § 39-3629.

Amendments.

The 2014 amendment, by ch. 59, inserted “fund transfers from the wastewater facility loan account” near the end of the section.

Compiler’s Notes.

The bracketed insertions in the section heading and text were added by the compiler to reflect the 2001 name change of the fund. See § 39-7602.

§ 39-7604. Appropriations for the drinking water loan account [fund] — Purpose of chapter. — Moneys in the drinking water loan account [fund] are hereby perpetually appropriated to provide loans and other forms of financial assistance authorized under title XVI of the public health service act known as the safe drinking water act and the safe drinking water act amendments of 1996, 42 U.S.C. 300f et seq., to any eligible public water system in order to enable the system to comply with the above referenced act and relevant regulations.

History.

I.C., § 39-7604, as added by 1997, ch. 26, § 2, p. 36.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in the section heading and text were added by the compiler to reflect the 2001 name change of the fund.

RESEARCH REFERENCES

A.L.R. — Validity, Construction, and Application of Lead Limitations and “Lead and Copper” Rule of Safe Drinking Water Act. 16 A.L.R. Fed. 3d 3.

Citizen's Cause of Action Under Safe Drinking Water Act, 42 U.S.C. § 300j-8. 16 A.L.R. Fed. 3d 4.

§ 39-7605. Limits on the amounts and loans. — The director may make loans to eligible public water systems pursuant to the requirements of this chapter and federal laws and regulations provided, that the projected disbursements for such loans would not cause the projected balance in the loan fund to fall below zero at any time. All loan disbursements shall be subject to the availability of moneys in the account [fund].

History.

I.C., § 39-7605, as added by 1997, ch. 26, § 2, p. 36.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler to reflect the 2001 name change to the drinking water loan fund.

§ 39-7606. Public water system supervision fund. — (1) There is hereby created in the state treasury the public water system supervision fund. Moneys in the fund shall consist of fees assessed pursuant to rules of the department on regulated public drinking water systems, federal funds which are received by the state to provide for the public water system supervision program, donations, state appropriations and any other moneys from whatever source.

(2) Idle or surplus moneys in the public water system supervision fund established by this section shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in [section 67-1210, Idaho Code](#). Interest received on all such investments shall be paid into the fund. Moneys in the fund may be expended pursuant to appropriation.

History.

[I.C., § 39-7606](#), as added by 2000, ch. 165, § 1, p. 416.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 2 of S.L. 2000, ch. 165 declared an emergency. Approved April 3, 2000.

Chapter 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

Sec.

39-7701. Legislative findings.

39-7702. Definitions.

39-7703. Immunity from liability for health care providers providing charitable medical care.

39-7704. Registration of free medical clinics — Requirements.

39-7705. Costs and fees.

§ 39-7701. Legislative findings. — The legislature of the state of Idaho finds that access to high quality health care services is a concern of all persons. However, access to such services is severely limited for some residents of the state, particularly those who reside in remote, rural areas or in the urban areas. Physicians and other health care professionals have traditionally worked to assure broad access to health care services and many are willing to volunteer their services to address the health care needs of Idahoans who may otherwise not be able to obtain such services. The public policy of this state is to encourage and facilitate voluntary provision of health care services.

History.

I.C., § 39-7701, as added by 1998, ch. 295, § 1, p. 976.

§ 39-7702. Definitions. — As used in this chapter:

(1) “Community health screening event” means an event sponsored by a school, a church, a civic club or another community organization for the purpose of providing health screenings by health care providers who are not compensated for their volunteer service at the event.

(2) “Compensation” means any remuneration, whether by way of salary, fee or otherwise, for health care services rendered. Compensation does not include actual and necessary expenses that are incurred by a volunteer health care provider in connection with the services provided or the duties performed by the health care provider on behalf of a free clinic, and that are reimbursed to the volunteer health care provider.

(3) “Free medical clinic” means a facility other than a hospital or health care provider’s office which is an organized community-based program, registered with the department of health and welfare, at which primary medical care is provided without charge to individuals unable to pay for it, and at which the care provided does not include the use of general anesthesia or require an overnight stay in a health care facility.

(4) “Health care provider” means any physician, dentist, optometrist, physician assistant, nurse, or other person who is licensed, certified, or registered under title 54, Idaho Code, to provide health care or other professional services or who is otherwise authorized to practice in Idaho. “Health care provider” also includes an individual enrolled in an accredited education or training program for licensure, certification, or registration under title 54, Idaho Code, while the individual is providing services under the direct supervision of a person who is licensed, certified, or registered under title 54, Idaho Code, and practicing within his regulated scope of practice, as long as the patient has been notified that the individual is a student.

(5) “Health screening” means an examination, an evaluation or another health care assessment of a person by a licensed health care provider practicing within the provider’s scope of practice to determine the fitness of

an individual to participate in an event or activity or to determine whether an individual needs additional health care evaluation or treatment.

(6) “Voluntary provision of health care services” means providing professional services by a health care provider without compensation.

History.

I.C., § 39-7702, as added by 1998, ch. 295, § 1, p. 976; am. 2018, ch. 38, § 1, p. 97; am. 2020, ch. 57, § 1, p. 138.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2018 amendment, by ch. 38, added present subsections (1) and (5) and redesignated the remaining subsections accordingly.

The 2020 amendment, by ch. 57, rewrote subsection (4), which formerly read: “Health care provider’ means any physician, dentist, optometrist, physician assistant or nurse who is licensed, certified, registered or otherwise authorized to practice in Idaho.”

§ 39-7703. Immunity from liability for health care providers providing charitable medical care. — (1) Any health care provider who voluntarily provides needed medical or health care services to any person at a free medical clinic or who provides health screenings at a community health screening event without compensation or the expectation of compensation shall be immune from liability for any civil action arising out of the provision of such medical or health services. This section shall not extend immunity to the health care provider for any acts constituting intentional, willful or grossly negligent conduct or to acts by a health care provider that are outside the scope of practice authorized by the provider's licensure, certification or registration.

(2) Immunity pursuant to subsection (1) of this section shall apply only if the health care provider and the patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of compensation and that the health care provider shall be immune as specified herein.

(3) Nothing in this section shall prohibit a free medical clinic from accepting voluntary contributions for health care services provided to a patient who has acknowledged his or her ability and willingness to pay a portion of the value of the health care services provided. Any voluntary contribution collected for providing care at a free medical clinic shall be used only to pay overhead expenses of operating the clinic. No portion of any moneys collected shall be used to provide compensation to any health care provider.

(4) If a health care provider is insured for liability for negligent acts or omissions arising from providing health care services at a free clinic, the immunity provided in subsection (1) of this section is waived, provided however, the amount recovered shall not exceed the limits of such applicable insurance coverage.

History.

I.C., § 39-7703, as added by 1998, ch. 295, § 1, p. 976; am. 2018, ch. 38, § 2, p. 97.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 38, in subsection (1), substituted “clinic or who provides health screenings at a community health screening event without compensation or the expectation of compensation” for “clinic without compensation or the expectation of compensation due to the inability of such person to pay for the services” near the middle of the first sentence.

§ 39-7704. Registration of free medical clinics — Requirements. —

(1) Before providing volunteer health care services in this state, a free medical clinic shall register with the department of health and welfare by submitting a registration fee of fifty dollars (\$50.00) and filing a registration form that shall contain:

(a) The name of the free clinic and sponsoring organization, if any; (b) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the free clinic or sponsoring organization, if any; (c) The address, including street, city, zip code and county, of the free clinic; (d) Telephone number;

(e) Such additional information as the department may require.

(2) Each free clinic shall maintain a list of health care providers associated with its provision of voluntary health care services. For each such health care provider, the free clinic shall maintain a copy of a current license, certificate or registration and shall further require each health care provider to attest in writing that such provider's license, certificate or registration is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction.

(3) The free clinic shall maintain such records for a period of at least five (5) years following the provision of health care services and shall furnish such records upon request to the department.

(4) Compliance with subsections (1) and (2) of this section shall be prima facie evidence that the free clinic has exercised due care in its selection of health care providers and shall be immune from suit for negligent acts or omissions as provided in subsection (1) of [section 39-7703, Idaho Code](#).

(5) The department may revoke the registration of any free clinic who fails to comply with the requirements of subsections (1) through (4) of this section. Any such revocation shall be conducted in accordance with the administrative procedure act.

(6) The provisions of this section shall not apply to community health screening events.

History.

I.C., § 39-7704, as added by 1998, ch. 295, § 1, p. 976; am. 2018, ch. 38, § 3, p. 97.

STATUTORY NOTES**Cross References.**

Administrative procedure act, § 67-5201 et seq.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2018 amendment, by ch. 38, added subsection (6).

§ 39-7705. Costs and fees. — Notwithstanding any other provision of law to the contrary, if a party names as a defendant a health care provider who has immunity pursuant to [section 39-7703, Idaho Code](#), in a suit alleging willful or intentional misconduct or gross negligence arising out of treatment at a free clinic which qualifies for immunity pursuant to [section 39-7703, Idaho Code](#), and the trial judge dismisses the complaint or grants a defendant's motion for judgment on the pleadings, or directs a verdict for a defendant, or grants a defendant's motion for judgment notwithstanding the verdict, or at any point in the proceedings grants a plaintiff's motion to discontinue the action against the defendant, the defendant shall be entitled to full costs and reasonable attorney's fees expended in connection with the defendant's defense of the action. If good reason is shown, the trial judge may suspend the operation of this section.

History.

[I.C., § 39-7705](#), as added by 1998, ch. 295, § 1, p. 976.

Chapter 78

TOBACCO MASTER SETTLEMENT AGREEMENT

Sec.

39-7801. Findings and purpose.

39-7802. Definitions.

39-7803. Requirements. [For contingent repeal, see Compiler's note following second version of this section.]

39-7803. Requirements. [Effective contingent upon governor's proclamation; see Compiler's note following this section.]

39-7804, 39-7805. [Repealed.]

§ 39-7801. Findings and purpose. — (a) Cigarette smoking presents serious public health concerns to the state of Idaho (“state”) and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the “Master Settlement Agreement,” with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an

eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

History.

I.C., § 39-7801, as added by 1999, ch. 7, § 1, p. 7.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109 (2010).

RESEARCH REFERENCES

ALR. — Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various States, and State Statutes Implementing Agreement; Use and Distribution of MSA Proceeds. 25 A.L.R.6th 435.

§ 39-7802. Definitions. — (a) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) “Allocable share” means allocable share as that term is defined in the Master Settlement Agreement.

(d) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” nine one-hundredths (0.09) ounces of “roll-your-own” tobacco shall constitute one (1) individual “cigarette.”

(e) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) “Qualified escrow fund” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with [section 39-7803, Idaho Code](#).

(g) “Released claims” means released claims as that term is defined in the Master Settlement Agreement.

(h) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(i) “Tobacco product manufacturer” means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2) of this subsection.

The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (1) through (3) of this subsection.

(j) “Units sold” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the state or on unstamped “roll-your-own” tobacco containers, with each nine one-hundredths (0.09) ounces of “roll-your-own” tobacco equaling one (1) unit sold. The state tax commission shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History.

I.C., § 39-7802, as added by 1999, ch. 7, § 1, p. 7; am. 2005, ch. 39, § 1, p. 159.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12, and § 63-101.

Compiler’s Notes.

The phrase “the date of enactment of this act” in paragraph (h)(i) refers to the date of enactment of S.L. 1999, ch. 7, which was approved by the governor on February 12, 1999, effective July 1, 1999.

For more on Master Settlement Agreement, see <http://www.ag.idaho.gov/tobacco/MasterSettlement.html>.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109 (2010).

§ 39-7803. Requirements. [For contingent repeal, see Compiler's note following second version of this section.] — Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one (1) of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

1999: \$.0094241 per unit sold after the date of enactment of this act;

2000: \$.0104712 per unit sold;

For each of 2001 and 2002: \$.0136125 per unit sold;

For each of 2003 through 2006: \$.0167539 per unit sold;

For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (i) in the order in which they were placed into escrow; and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units

sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraphs (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

(4) In any action brought under this section, the court shall award the attorney general, if he is the prevailing party, reasonable costs, expenses and attorney's fees in bringing his action.

History.

I.C., § 39-7803, as added by 1999, ch. 7, § 1, p. 7; am. 2000, ch. 118, § 1, p. 256; am. 2003, ch. 289, § 1, p. 781.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

For more on Master Settlement Agreement, see <http://www.ag.idaho.gov/tobacco/Master Settlemtent.html>.

The phrase "the date of enactment of this act" in the introductory paragraph and in paragraph (b)(1) refers to the date of enactment of S.L. 1999, ch. 7, which was approved by the governor on February 12, 1999, effective July 1, 1999.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited [State v. Maybee, 148 Idaho 520, 224 P.3d 1109 \(2010\).](#)

§ 39-7803. Requirements. [Effective contingent upon governor's proclamation; see Compiler's note following this section.] — Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one (1) of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

1999: \$.0094241 per unit sold after the date of enactment of this act;

2000: \$.0104712 per unit sold;

For each of 2001 and 2002: \$.0136125 per unit sold;

For each of 2003 through 2006: \$.0167539 per unit sold;

For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (i) in the order in which they were placed into escrow; and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was

greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraphs (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

(4) In any action brought under this section, the court shall award the attorney general, if he is the prevailing party, reasonable costs, expenses and attorney's fees in bringing his action.

History.

I.C., § 38-7803, as added by 2003, ch. 289, § 4, p. 781.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

For more on Master Settlement Agreement, see <http://www.ag.idaho.gov/tobacco/MasterSettlement.html>.

The phrase "the date of enactment of this act" in the introductory paragraph and in paragraph (b)(1) refers to the date of enactment of S.L. 1999, ch. 7, which was approved by the governor on February 12, 1999, effective July 1, 1999.

Section 2 of S.L. 2003, ch. 289 provides: "Severability. If this act, or any portion of the amendment of subsection (b)(2)(B) of [Section 39-7803, Idaho Code](#), made by this act, is held by a court of competent jurisdiction to be unconstitutional, then Sections 3 and 4 of this act shall be in full force and effect. If such finding occurs, the Governor shall, upon his determination that such event has occurred, make a proclamation declaring said event to have happened and the date of such event and file the same with the Secretary of State." Section 3 of S.L. 2003, ch. 289 repeals Section 39-7803, as amended through S.L. 2003, ch. 289, § 1, and Section 4 of S.L. 2003, ch. 289 enacts this new version of the same code section.

The words enclosed in parentheses so appeared in the law as enacted.

**§ 39-7804, 39-7805. Cigarette distributor and stamping agent duties
— Additional attorney general authority and service of process.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 2003, ch. 33, § 1, effective July 1, 2003:

§ 39-7804, which comprised I.C., § 39-7804, as added by 2002, ch. 284, § 2, p. 827.

§ 39-7805, which comprised I.C., § 39-7805, as added by 2002, ch. 284, § 3, p. 827.

Chapter 79

LOCAL OPTION SWINE FACILITIES SITING ACT

Sec.

39-7901. Short title.

39-7902. Legislative findings and purposes.

39-7903. Definitions.

39-7904. Site approval required — Site approval is supplemental — Local option — Local action required for department action.

39-7905. Application — Facilities regulated.

39-7906. Director may make rules and contract with other agencies.

39-7907. Location guidelines.

39-7908. Site review panels established.

39-7909. Siting application — Fee — Rules.

39-7910. Duties of the director relative to applications.

39-7911. Financial assurance for closure and remediation.

39-7912. Director may request additional information.

39-7913. Violations and enforcement.

39-7914. Confidentiality of records.

39-7915. Severability clause.

39-7916. Conflicts clause.

§ 39-7901. Short title. — This act shall be known as the “Local Option Swine Facilities Siting Act.”

History.

I.C., § 39-7901, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2000, ch. 268, which is codified as §§ 39-7901 to 39-7916.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7902. Legislative findings and purposes. — (1) The legislature finds that:

(a) The swine industry is experiencing rapid changes such as increased sophistication of production technology, increased demand for capital to maintain or expand operations, consolidation of production and packing facilities and changing consumer demands and markets;

(b) Large swine facilities increase social and environmental impacts in the areas where these facilities are located;

(c) Adverse public health and environmental impacts can result from the improper siting of large swine facilities, therefore the need for establishing safe sites with an adequate supply of natural resources, such as water, and an adequate capacity for the disposal of animal waste is a matter of statewide concern;

(d) [Section 39-104A, Idaho Code](#), vests the department of environmental quality with the responsibility to make rules regulating swine operations; and [section 39-105, Idaho Code](#), vests the department of environmental quality with the responsibility for the general supervision of the promotion and protection of the life, health and environment of the people of the state, including regulation of air quality, water quality and disposal of solid waste.

(2)(a) To facilitate swine facility siting decisions by boards of county commissioners and governing bodies of cities, this chapter establishes a review process within the department of environmental quality for construction or expansion of large swine facilities of a certain size, and to require approval of sites.

(b) The procedures and requirements established in this chapter are necessary to facilitate the proper siting of large swine facilities, to effect timely and responsible completion of statutory duties and to ensure protection of human health, natural resources, private property values and the environment of the state.

(c) The site approval required in this chapter is required in addition to any other license, permit or approval required by law or rule.

(3) It is the intent of the legislature that this chapter will be applied only to swine facilities with a capacity of twenty thousand (20,000) animal units or more and that this chapter will not be applied to any other confined animal feeding operations.

History.

I.C., § 39-7902, as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 103, § 72, p. 253.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7903. Definitions. — As used in this chapter:

(1) “Active unit” means that part of a facility or unit that has received or is receiving wastes and that has not been closed.

(2) “Animal unit” is a unit of measurement equaling two and one-half (2½) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds) multiplied by four-tenths (.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(3) “Animal waste” means animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine.

(4) “Animal waste management system” means any structure or system that provides for the collection, treatment, disposal, distribution or storage of animal waste.

(5) “Applicant” means the owner or the operator with the owner’s written consent.

(6) “Aquifer” means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

(7) “Certified planner” means a person who has completed the nutrient management certification in accordance with the nutrient management standard.

(8) “County” means any county in the state of Idaho.

(9) “Department” means the Idaho department of environmental quality.

(10) “Director” means the director of the Idaho department of environmental quality or his designee.

(11) “Existing facility” means a facility built and in operation one (1) year or more before the original effective date of this chapter.

(12) “Expand” or “expanding facility” means a swine facility of less than twenty thousand (20,000) animal units that increases its one-time animal unit capacity to twenty thousand (20,000) or more animal units.

(13) “Facility” means any place, site or location or part thereof where swine are kept, handled, housed, or otherwise maintained and includes, but is not limited to, all buildings, lots, pens, animal waste management systems, structures, and other appurtenances and improvements on the land.

(14) “Ground water” means water below the land surface in a zone of saturation.

(15) “Holocene fault” means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(16) “Land application” means the spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes.

(17) “Natural resources conservation service” or “NRCS” means the United States department of agriculture, natural resources conservation service.

(18) “Nutrient management plan” means a plan prepared in compliance with the nutrient management standard or other equally protective standard approved by the director for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly of water quality.

(19) “Nutrient management standard” means the standard of the United States department of agriculture, natural resource conservation service code 590 or the Idaho agricultural pollution abatement plan, nutrient management standard component practice.

(20) “One-time animal unit capacity” means the maximum number of animal units that a facility is capable of housing at any given point in time.

(21) “Operate” means to confine, feed, propagate, house or otherwise sustain swine.

(22) “Operator” means the person(s) responsible for the overall operation of a facility or part of a facility.

(23) “Owner” means the person(s) who owns a facility or part of a facility.

(24) “Permit” when used as a noun means a permit issued by the director pursuant to rules of the department.

(25) “Person” means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry or any other legal entity whatsoever, and includes owners and operators.

(26) “Plan of operation” or “operating plan” means the written plan developed by an owner or operator of a swine facility unit detailing how the facility is to be operated during its active life, during closure, and throughout the postclosure period.

(27) “Process wastewater” means any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste.

(28) “Qualified professional” means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(29) “Unauthorized discharge” means a release of animal waste to the environment or waters of the state that is not authorized by the license or the terms of a national pollutant discharge elimination system (NPDES) permit issued by the federal environmental protection agency.

(30) “Water quality standard” means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters for the state of Idaho.

(31) “Waters of the state” means all the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

History.

I.C., § 39-7903, as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 103, § 73, p. 253.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 56-1001 et seq.

Compiler’s Notes.

The phrase “original effective date of this chapter” in subdivision (11) refers to the effective date of S.L. 2000, ch. 268, which was April 12, 2000.

For natural resources conservation service, conservation practice standard 590, see *[http://efotg.sc.egov.usda.gov/references/public WI590.pdf](http://efotg.sc.egov.usda.gov/references/public/WI590.pdf)*.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7904. Site approval required — Site approval is supplemental — Local option — Local action required for department action. — (1) No person may construct or expand a large swine facility regulated by this chapter without first obtaining site approval from the director as provided in this chapter.

(2) The site approval required by this chapter for construction or expansion of a large swine facility is required in addition to requirements of any rules of the department. Further, the site approval required by this chapter must be obtained in addition to any other license, permit or approval required by law or rule.

(3) This chapter does not preempt the local regulation of swine facilities. This chapter provides boards of county commissioners and governing bodies of cities with an optional procedure for siting swine facilities. If boards of county commissioners and governing bodies of cities do not exercise their option to comply with this chapter, they are not subject to its provisions and may exercise individual authority to accept, regulate or reject swine facilities independently of this chapter.

(4) This chapter applies only if the board of county commissioners or governing body of a city, whichever has jurisdiction over the site for a proposed swine facility, chooses to comply with this chapter. If a board of county commissioners or a governing body of a city with jurisdiction chooses not to comply with this chapter, the department is not required to take any action under this chapter.

(5) Boards of county commissioners and governing bodies of cities that choose to comply with this chapter shall signify compliance by resolution or ordinance communicated to the director in writing.

(6) If a board of county commissioners or a governing body of a city chooses to comply with this chapter, the department does not have to issue a determination or notice of environmental suitability of facility location pursuant to its rules for swine facilities, [IDAPA 16.01.09](#) [58.01.09].

History.

[I.C., § 39-7904](#), as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (6) was added by the compiler to reflect the 2000 amendment of the Idaho Administrative Code, transferring control of service facilities to the department of environmental quality.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7905. Application — Facilities regulated. — (1) The following swine facilities must obtain site approval under this chapter:

(a) New swine facilities having a one-time animal unit capacity of twenty thousand (20,000) or more animal units; and

(b) Existing swine facilities that expand their one-time animal unit capacity to twenty thousand (20,000) animal units or more.

(2) Two (2) or more swine facilities under common owners, operators or those with whom the owners or operators contract or are located within the same county or within five (5) miles of each other shall be considered, for purposes of licensing, to be a single facility regulated under this chapter, even though separately their capacity is less than twenty thousand (20,000) animal units. In each case, the director shall determine whether one (1) or multiple site approvals are required.

(3)(a) Existing swine facilities with a one-time animal unit capacity of twenty thousand (20,000) animal units built and in operation one (1) year or more before the original effective date of this chapter are exempt from the requirement to obtain a site approval pursuant to this chapter unless they expand as provided in this section. However, such facilities shall register with the director within three (3) months after the original effective date of this chapter. The director shall determine the information that must be submitted as part of their registration.

(b) Existing swine facilities required in this subsection to register with the director shall submit a nutrient management plan and closure plan to the director for approval within two (2) years of the original effective date of this chapter in accordance with rules of the department. An application fee shall not be required unless the facility is expanding.

History.

I.C., § 39-7905, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Compiler's Notes.

The phrase “the original effective date of this chapter” in subsection (3) refers to the effective date of S.L. 2000, ch. 268, which was April 12, 2000.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7906. Director may make rules and contract with other agencies. — (1) The director may adopt administrative rules he deems necessary or helpful to carry out the purposes of this chapter.

(2) The director may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this chapter.

History.

I.C., § 39-7906, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7907. Location guidelines. — This section provides location guidelines for swine facilities regulated by this chapter. Where the location guidelines provide a specific setback distance, that distance is the minimum setback distance that may be imposed. Further setback distances shall be imposed as circumstances require.

(1) A swine facility regulated by this chapter shall not:

(a) Locate its closest waste facility within at least two (2) miles of any occupied residence not owned or leased by the owner or operator of the swine facility;

(b) Land apply liquid animal waste within at least one (1) mile of the nearest corner of an occupied residence not owned or leased by the owner or operator of the swine facility.

(2) The setback distances provided in subsection (1) of this section do not apply if the affected property owner executes a written waiver with the owner or operator of the swine facility, under terms and conditions that the parties may negotiate. The written waiver is effective when recorded in the offices of the recorder of deeds in the county in which the property is located. The recorded waiver shall preclude enforcement of the setback distances contained in subsection (1) of this section. A change in ownership of the applicable property or change in ownership of the swine facility does not affect the validity of the waiver.

(3) All distances between occupied residences and swine facilities shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste structure or waste facility, as defined by the director.

(4) No liquid animal waste may be land applied within at least one hundred (100) feet of an existing public or private drinking water well.

(5) The minimum distance from a waste structure or waste facility to a domestic well, public well or public water source shall be at least one (1) mile.

(6) Further, swine facilities shall not be located:

(a) In areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish or wildlife;

(b) So as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance. If no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the recommendations of the panel approving a site shall contain an analysis of the requirements and guidelines provided in this chapter. The analysis shall be accompanied by findings and conclusions, entered by the local government with jurisdiction after the local government has held a public hearing in accord with [section 67-6509, Idaho Code](#), that the public interest would be served by locating a swine facility on the site for which approval is sought;

(c) No nearer than one (1) mile to any local, state or national park, or land reserved or withdrawn for scenic or natural use; and

(d) No nearer than two (2) miles to a school, church, hospital or community center.

(7) A swine facility active unit shall not be located:

(a) Within a one hundred (100) year flood plain;

(b) Within five hundred (500) feet upstream of a perennial stream or river;

(c) Within one thousand (1,000) feet of any perennial lake or pond;

(d) So as to cause any measurable impact on water quality limited streams;

(e) Within a wetland;

(f) Within two hundred (200) feet to the property line of adjacent land;

(g) Within two hundred (200) feet of a holocene fault or adjacent to geologic features which could compromise the structural integrity of a swine facility active unit unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred (200) feet will prevent damage to the structural integrity of the swine

facility unit and will be protective of human health and the environment. For the purposes of this subsection:

- (i) “Fault” means a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side;
 - (ii) “Displacement” means the relative movement of any two (2) sides of a fault measured in any direction;
 - (iii) “Holocene” means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.
- (h) Within seismic impact zones, unless the owner or operator demonstrates to the director that all swine facility active units and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the director that it has been placed in the operating record. For the purposes of this section:
- (i) “Seismic impact zone” means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth’s gravitational pull (g), will exceed one-tenth (0.10g) in two hundred fifty (250) years;
 - (ii) “Maximum horizontal acceleration in lithified earth material” means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;
 - (iii) “Lithified earth material” means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth’s surface.

(i) On any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of a swine facility without unduly threatening the integrity of the design due to inherent site instability;

(j) Where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the active unit.

History.

I.C., § 39-7907, as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 350, § 2, p. 1228.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

Section 3 of S.L. 2001, ch. 350 declared an emergency. Approved April 9, 2001.

§ 39-7908. Site review panels established. — (1) A site review panel shall be established to ensure public input in the siting process and to recommend to the director site approval, approval with conditions or rejection.

(2) A panel shall consist of eight (8) members to be appointed as follows:
(a) Three (3) members shall be the director of the department of environmental quality or his designee, the director of the department of water resources or his designee, and the director of the department of agriculture or his designee.

(b) One (1) member shall be a public member appointed by the governor. The public member shall be an environmental professional, shall serve as chairman of the panel and shall be a voting member. A member who is a public member shall be appointed to serve on site review panels only until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(c) Two (2) members shall be appointed by the city council of the city located closest to, or in which the swine facility is proposed to be located or expanded, provided the governing body of the city has signified compliance with this chapter as provided in [section 39-7903, Idaho Code](#). At least one (1) shall be a resident of the city. However, if two (2) cities are equidistant from the proposed or expanding swine facility, plus or minus five (5) miles, the city council of each city shall appoint one (1) member each to the site review panel, each of whom shall be a resident of the city appointing them. The members serving pursuant to this subsection shall serve until the particular site application subject to their review is approved or it is rejected and is no longer subject to their review.

(d) Two (2) members shall be appointed by the county commission and be residents of the county where the swine facility is proposed to be located or expanded, provided the board of county commissioners has signified compliance with this chapter as provided in [section 39-7903, Idaho Code](#). The members serving pursuant to this subsection shall serve

until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(e) A person nominated to represent a city or county shall not have a conflict of interest, as that term is defined in [section 74-403, Idaho Code](#), or derive any economic gain as that term is defined in [section 74-403, Idaho Code](#), from the location of the proposed or expanding swine facility.

(3) The director shall notify the city council of the nearest city, or cities if two (2) cities are within five (5) miles of the site of the proposed facility, and the board of county commissioners in which the site is located, of a site application filed with the department and shall instruct the city or cities and county to appoint the necessary members to a panel.

(4) A majority of members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of a majority of the panel shall constitute a legal action of the panel, provided that no meeting of the panel shall occur unless there are at least as many members present representing the city and county as there are representing the state and the public as appointed pursuant to subsections (2)(a) and (b) of this section. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(5) The director shall make staff available to assist the panel in carrying out its responsibilities.

(6) Members of the panel who are not state employees shall be entitled to receive compensation as provided in [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 39-7908](#), as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 103, § 74, p. 253; am. 2015, ch. 141, § 99, p. 379.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-101.

Director of department of environmental quality, § 39-105.

Director of department of water resources, § 42-1701.

State open meetings law, § 74-201 et seq.

Amendments.

The 2015 amendment, by ch. 141, substituted “74-403” for “59-703” in two instances in paragraph (2)(e).

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7909. Siting application — Fee — Rules. — (1) A site application shall include, in a format set forth by the director and when determined applicable by the director, the following information:

- (a) Name, mailing address and phone number of the facility owner;
- (b) Name, mailing address and phone number of the facility operator;
- (c) Name and mailing address of the facility;
- (d) Legal description of the facility location;
- (e) The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners;
- (f) The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years;
- (g) The one-time animal unit capacity of the facility;
- (h) The type of animals to be confined at the facility;
- (i) Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for a permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources which, if approved, will supply adequate water for the proposed operation;
- (j) The facility's biosecurity and sanitary standards.

(2) A facility plan. Plans and specifications for the facility's animal waste management system that include the following information:

- (a) Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following:
 - (i) Layout of the facility, including buildings and animal waste management system;

(ii) The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant;

(iii) The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and

(iv) Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility.

(b) Facility specifications including:

(i) A site plan showing:

1. Building locations;
2. Waste facilities;
3. All waste conveyance systems; and
4. All irrigation systems used for land application, including details of approved water supply protection devices.

(ii) Building plans showing:

1. All wastewater collection systems in housed units;
2. All freshwater supply systems, including details of approved water supply protection devices;
3. Detailed drawings of wastewater collection and conveyance systems and containment construction; and
4. Detailed construction and installation procedures.

(3) Site characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information:

(a) A description of monitoring methods, frequency and reporting components related to either leak detection systems and/or ground water

monitoring wells;

(b) The climatic, hydrogeologic and soil characteristics;

(c) The depth to water and a potentiometric map for the uppermost and regional aquifer;

(d) The vertical and horizontal conductivity, gradient and ground water flow direction and velocity;

(e) Estimates of recharge to the uppermost aquifer;

(f) Information which characterizes the relationship between the ground water and adjacent surface waters; and

(g) A summary of local ground water quality data.

(4) A nutrient management plan. A plan prepared by a certified planner demonstrating compliance with the nutrient management standard for land application.

(5) A plan for meeting standards for heavy metals as those provided in [40 CFR section 503](#), subchapter O.

(6) A plan for disposal of dead animal carcasses.

(7) An air quality management plan.

(8) A closure plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes:

(a) The estimated length of operation of the facility;

(b) A description of the procedures, methods and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste;

(c) A plan for permanent disposal of residual solid waste.

(9) Other information. An applicant shall provide any other information relative to this section and deemed necessary by the director to assess protection of human health and the environment, including information showing that:

(a) The harm to scenic, public health, environmental, private property, historic, cultural or recreational values is not substantial or can be mitigated;

(b) The risk and impact of accident during transportation of animal waste or animal carcasses is not substantial or can be mitigated. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with [IDAPA 02.04.03](#), “Rules of Department of Agriculture Governing Animal Industry,” section 050, “Dead Animals, Movement, Disposal”;

(c) The impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated;

(d) The facility or operations associated with the facility do not create a public health hazard or nuisance conditions including odors;

(e) The applicant has the financial ability to construct, operate and close the facility.

(10) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(11) The application shall be accompanied by a fee. The director shall establish by rule the scale for determining the application fee. The fee shall be based on the cost to the site review panel of reviewing the application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon an application.

History.

[I.C., § 39-7909](#), as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Compiler’s Notes.

The provisions of the Idaho Administrative Code relating to animal industries and the disposal of dead animals were revised in 2002. Rules governing dead animals movement and disposal are now found at [IDAPA 02.04.17](#).

The letter “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7910. Duties of the director relative to applications. — (1) Upon determination that a siting application is complete, the director shall:

(a) Notify the permanent panel members, the city and/or county in which the swine facility site is located, the director of the department of fish and game, the director of the department of law enforcement [Idaho state police], and other state agencies as deemed appropriate by the director.

(b) Publish a notice that the application has been received, as provided in [section 60-109, Idaho Code](#), in a newspaper having major circulation in the county and the immediate vicinity of the site. The notice shall contain a map indicating the location of the site, a description of the proposed action and the location where the application may be reviewed. The notice shall describe the procedure by which the siting approval under this chapter may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (2) of [section 39-7908, Idaho Code](#). Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) Within thirty (30) days after appointment of panel members, the panel shall meet to review and establish a timetable for the consideration of the draft site approval.

(4) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the site and proposed facility, a description of the proposed action, and the location where the application for a siting approval may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting approval;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in [section 60-109, Idaho Code](#).

(5) Comment and input on the proposed siting of the swine facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for thirty (30) days after the public hearing date. The public hearing shall be held in the same county as the proposed site. If the proposed site is adjacent to a city or populated area in a neighboring county, it is recommended that public hearings also be held in the neighboring county.

(6) The panel shall consider, but not be limited to, the following:

(a) The risk of the spread of disease or impact upon public health from improper treatment, storage or incineration methods;

(b) The impact on local units of government where the proposed swine facility is to be located in terms of health, safety, cost and consistency with local planning and existing development;

(c) The nature of the probable environmental and public health impact;

(d) The financial capability of the applicant to construct, operate and close the swine facility.

(e) Impact on adjacent property values.

(7) The panel shall consider the concerns and objections submitted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the swine facility. The panel may propose conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(8) Within one hundred eighty (180) days after creation, the panel shall issue an approval letter, approval letter with conditions, or rejection. If the panel recommends conditions, a clear statement of the need for a condition

must be submitted to the director. If the panel recommends rejection, a clear statement of the reasons for the rejection must be submitted to the director.

(9) The director shall not issue a permit to operate under [IDAPA 16.01.09](#) [58.01.09], unless a site has been approved by the site review panel. Approval of a site by the panel does not require the director to issue a permit to operate under [IDAPA 16.01.09](#) [58.01.09].

History.

[I.C., § 39-7910](#), as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Cross References.

Director of department of fish and game, § 36-106.

Compiler's Notes.

The bracketed insertion was added in paragraph (1)(a) by the compiler to reflect the reorganization of the department of law enforcement as the Idaho state police by S.L. 2000, ch. 469.

The bracketed insertions in subsection (9) were added by the compiler to reflect the 2000 reorganization of the Idaho Administrative Code, transferring the permitting of swine and poultry facilities to the department of environmental quality.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7911. Financial assurance for closure and remediation. — (1) All swine facilities regulated by [section 39-104A, Idaho Code](#), and this chapter shall provide financial assurances demonstrating financial capability to meet requirements for closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(2) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the department of environmental quality.

History.

[I.C., § 39-7911](#), as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 103, § 75, p. 253.

STATUTORY NOTES

Compiler's Notes.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7912. Director may request additional information. — The applicant shall provide the director with additional information the director deems necessary to process an application, within thirty (30) days of the director's request. The time period within which the director must act with regard to an application shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the director, the director may stop the application process and require the applicant to submit a new application.

History.

I.C., § 39-7912, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7913. Violations and enforcement. — (1) The following acts are unlawful:

(a) Failure to comply with this chapter and any rules of the department regulating swine facilities, and conditions of site approval granted pursuant to this chapter; (b) Knowingly making a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to this chapter, rules or conditions of a site approval.

(2) Any person violating this chapter or any site approval or order under this chapter is liable for a civil or criminal penalty in accordance with chapter 1, title 39, Idaho Code. The director may apply the provisions of chapter 1, title 39, Idaho Code, to ensure compliance.

(3) The director may revoke a site approval: (a) For material violation of any condition of a site approval, final agency order or order or judgment of a court secured by any state or federal agency and relating to the operation of a swine facility; (b) If an approval was obtained by misrepresentation or failure to disclose all relevant facts; (c) If approval for adequate water rights cannot be obtained from the Idaho department of water resources; (d) The site or facility does not meet the requirements of this chapter.

(4) A private right of action on behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or rule authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

History.

I.C., § 39-7913, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Cross References.

Department of water resources, § 42-1701 et seq.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7914. Confidentiality of records. — Information obtained by a public agency pursuant to this chapter or its associated rules is subject to public disclosure pursuant to the provisions of chapter 1, title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment as provided in [section 74-114, Idaho Code](#), and rules of the department of environmental quality.

History.

[I.C., § 39-7914](#), as added by 2000, ch. 268, § 1, p. 755; am. 2001, ch. 103, § 76, p. 253; am. 2015, ch. 141, § 100, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” and substituted “74-114” for “9-342A”.

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7915. Severability clause. — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.

I.C., § 39-7915, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

§ 39-7916. Conflicts clause. — If a conflict arises between this chapter and rules of the department regulating swine facilities, the most restrictive provision shall apply.

History.

I.C., § 39-7916, as added by 2000, ch. 268, § 1, p. 755.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 268 declared an emergency. Approved April 12, 2000.

Chapter 80

UNIFORM PUBLIC SCHOOL BUILDING SAFETY

Sec.

39-8001. Short title.

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board].

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§ 39-8001. Short title. — This act, comprised of Sections 39-8001, 39-8002, 39-8003, 39-8004, 39-8005, 39-8006, 39-8007, 39-8008, 39-8009, 39-8010, 39-8011 and 39-8012, Idaho Code, shall be known and may be cited as the “Idaho Uniform School Building Safety Act.”

History.

I.C., § 39-8001, as added by 2000, ch. 352, § 1, p. 1182.

STATUTORY NOTES

Compiler’s Notes.

The words “this act” refer to S.L. 2000, ch. 352, which is compiled as §§ 39-8001 through 39-8006, and 39-8007 through 39-8012, and 39-4113.

§ 39-8002. Declaration of purpose. — The purpose of this act is to assure the safety of children and others who use Idaho’s public schools by providing for a uniform school building safety code to apply to school buildings and by establishing procedures for achieving compliance with the code.

History.

I.C., § 39-8002, as added by 2000, ch. 352, § 1, p. 1182.

STATUTORY NOTES

Compiler’s Notes.

The words “this act” refer to S.L. 2000, ch. 352, which is compiled as §§ 39-8001 through 39-8006, and 39-8007 through 39-8012, and 39-4113.

§ 39-8003. Scope. — This act shall apply to all facilities, existing now or constructed in the future, that are owned, leased or used for educational purposes by public school districts, charter schools, or a school for children in any grades kindergarten through twelve (12) that is operated by the state of Idaho receiving state funding. The authority granted under this act shall not prohibit local governments from acting to enforce applicable building and fire codes.

History.

I.C., § 39-8003, as added by 2000, ch. 352, § 1, p. 1182; am. 2001, ch. 326, § 4, p. 1143.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 2000, ch. 352, which is compiled as §§ 39-8001 through 39-8006, and 39-8007 through 39-8012, and 39-4113.

Effective Dates.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

§ 39-8004. Definitions. — As used in this act:

(1) “Administrator” means the administrator of the division of building safety or his designated representative.

(2) “Day” shall mean a calendar day unless otherwise specified.

(3) “Imminent safety hazard” means a condition that presents an unreasonable risk of death or serious bodily injury to occupants of a building.

(4) “Licensed professional” means a person licensed by the state of Idaho as an architect or an engineer.

(5) “Local government” means any city or county of this state.

(6) “Serious safety hazard” means a condition that presents an unreasonable health risk or risk of injury to occupants of a building.

History.

I.C., § 39-8004, as added by 2000, ch. 352, § 1, p. 1182; am. 2002, ch. 158, § 2, p. 458.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Compiler’s Notes.

The words “this act” refer to S.L. 2000, ch. 352, which is compiled as §§ 39-8001 through 39-8006, and 39-8007 through 39-8012, and 39-4113.

§ 39-8005. Idaho uniform school building safety code committee created — Appointment — Terms — Quorum — Meetings — Compensation. — There is hereby created within the office of the superintendent of public instruction the Idaho uniform school building safety code committee, hereafter referred to as the committee. The committee shall consist of eight (8) members and shall include one (1) representative from each of the following: the office of the superintendent of public instruction; the division of building safety; and the insurance industry, appointed by the department of insurance. The governor shall appoint three (3) members as follows: one (1) representative of local school boards; one (1) representative of school superintendents and a chairman, all of whom shall serve at his pleasure. The committee shall also include two (2) members of the Idaho legislature, one (1) appointed by the president pro tempore of the senate and one (1) appointed by the speaker of the house of representatives. A majority of the membership of the committee is a quorum. Upon completion of development of the Idaho uniform school safety code provided for in [section 39-8006, Idaho Code](#), the committee shall meet at least annually to review and make any necessary revisions to the Idaho uniform school safety code. Each member of the committee shall be reimbursed for expenses as provided by [section 59-509\(b\), Idaho Code](#), for each day spent in attendance at meetings of the committee.

History.

[I.C., § 39-8005](#), as added by 2000, ch. 352, § 1, p. 1182; am. 2010, ch. 166, § 1, p. 340.

STATUTORY NOTES

Cross References.

Department of insurance, § 41-201 et seq.

Division of building safety, § 67-2601A.

Superintendent of public instruction, § 67-1501 et seq, Amendments.

The 2010 amendment, by ch. 166, in the second sentence, substituted “eight (8) members” for “nine (9) members” and deleted “the department of administration” following “the division of business safety.”

Effective Dates.

Section 3 of S.L. 2000, ch. 352, provides: “An emergency existing therefor, which emergency is hereby declared to exist, [Section 39-8005, Idaho Code](#), and [Section 39-8006, Idaho Code](#), as enacted by Section 1 of this act, shall be in full force and effect on and after its passage and approval. The remaining provisions of Section 1 of this act, and Section 2 of this act, shall be in full force and effect on and after July 1, 2000.”

§ 39-8006. Committee to develop Idaho uniform school building safety code — Interim code. — (1) The committee shall develop the Idaho uniform school building safety code to be adopted by rule of the administrator pursuant to [section 39-8007, Idaho Code](#). The Idaho uniform school building safety code shall address elements of the national codes identified in [section 39-4109, Idaho Code](#), and rule of the state board of education at [IDAPA 08.02.02.130](#).

(2) Until the Idaho uniform school building safety code is adopted by rule pursuant to [section 39-8007, Idaho Code](#), the national codes adopted under [section 39-4109, Idaho Code](#), and rule of the state board of education at [IDAPA 08.02.02.130](#) shall serve as the interim Idaho uniform school building safety code.

History.

[I.C., § 39-8006](#), as added by 2000, ch. 352, § 1, p. 1182.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

Effective Dates.

Section 3 of S.L. 2000, ch. 352, provides: “An emergency existing therefor, which emergency is hereby declared to exist, [Section 39-8005, Idaho Code](#), and [Section 39-8006, Idaho Code](#), as enacted by Section 1 of this act, shall be in full force and effect on and after its passage and approval. The remaining provisions of Section 1 of this act, and Section 2 of this act, shall be in full force and effect on and after July 1, 2000.”

§ 39-8006A. Best practices maintenance plan for school buildings. —

The administrator of the division of building safety and the state department of education shall consult and shall draft a best practices maintenance plan for school buildings which shall be supplied to the superintendent of each school district. Based on the best practices maintenance plan, each school district shall develop a ten (10) year plan and submit it to the division of building safety for approval. Such plan shall be submitted in all years ending in zero (0) or five (5), and shall include information detailing the work completed pursuant to the previous maintenance plan and any revisions to that plan.

History.

I.C., § 39-8006A, as added by 2006, ch. 311, § 9, p. 957; am. 2012, ch. 66, § 2, p. 188.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

State department of education, § 33-125.

Amendments.

The 2012 amendment, by ch. 66, substituted “division of building safety” for “state department of education” near the end of the second sentence; and, in the third sentence, substituted “Such plan shall be submitted in all years ending in zero (0) or five (5), and shall include information” for “Annually thereafter, the school district shall submit a report to the state department of education” and inserted “previous” preceding “maintenance.”

Legislative Intent.

Section 1 of S.L. 2006, ch. 311 provided: “**Legislative Findings and Intent** . The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and

maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to

address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under [Section 1, Article IX, of the Constitution](#) of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing

authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay.”

Compiler's Notes.

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

§ 39-8007. Powers and duties of the administrator. — (1) The administrator shall enforce the provisions of this chapter in cooperation with the superintendent of public instruction and the building code advisory board [Idaho building code board].

(2) The administrator shall promulgate rules necessary to carry out the provisions of this chapter. Such rules shall be promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code.

(3) The administrator shall establish a program for the timely review of public school construction plans as required by [section 39-4113\(4\)\(f\), Idaho Code](#).

(4) Upon request, the administrator shall provide training to school districts on the Idaho uniform school building safety code.

History.

[I.C., § 39-8007](#), as added by 2000, ch. 352, § 1, p. 1182; am. 2009, ch. 219, § 3, p. 681; am. 2010, ch. 166, § 2, p. 340; am. 2010, ch. 174, § 2, p. 357.

STATUTORY NOTES

Cross References.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2009 amendment, by ch. 219, in subsection (3), deleted “all” preceding “public school construction plans” and updated the section reference in light of the 2009 amendment for § 39-4113.

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 166, deleted “the department of administration” following “superintendent of public instruction” in subsection (1).

The 2010 amendment, by ch. 174, updated the section reference in subsection (3) in light of the 2010 amendment of § 39-4113.

Compiler's Notes.

The bracketed insertion in subsection (1) was added by the compiler to reflect the 2002 name change of the referenced agency. See § 39-4106.

§ 39-8008. Additional duties of administrator — Right of inspection — Posting. — (1) The administrator shall have authority under this section to enter all public school facilities covered by this chapter at reasonable times to inspect, on an annual basis, such facilities for compliance with the Idaho uniform school building safety code; provided however, that inspections shall take into account the age of the school facilities and the appropriate codes that would have been in effect at the time of the construction of such facilities; provided further, that regardless of the codes in effect at the time of construction, imminent safety hazards found in public school facilities shall be identified and the provisions of this chapter relating to such imminent safety hazards shall apply.

(2) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes does not constitute an imminent safety hazard or serious safety hazard, he shall notify in writing the school district superintendent, principal, board member, or other person in charge. Such notification shall state, in bold print, that the citations for violations or nonconformances constitute recommendations only.

(3) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes a serious safety hazard, he shall immediately issue a written order or notice requiring the school superintendent, principal, board of trustees or other person in charge to eliminate the condition without delay and within the time specified by the administrator in the notice or order, but not exceeding one (1) year. The administrator may also designate a licensed professional to independently evaluate the identified condition prior to issuing a written order to eliminate the condition.

(4) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes an imminent safety hazard, he shall, within two (2) working days, designate a licensed professional to independently evaluate the identified condition prior to issuing any report under this chapter. That licensed professional shall, within fourteen (14) days, complete its independent evaluation of the condition identified by the administrator and notify the administrator of its

conclusions. If the administrator determines that the condition constituting an imminent safety hazard could reasonably be expected to cause death or serious physical harm before the evaluation of the designated licensed professional can be completed and before the condition can be eliminated, he shall determine the extent of the area where such condition exists and thereupon shall issue a written order or notice requiring the school district superintendent, principal, board of trustees or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering, such area pending the evaluation of the designated licensed professional. This order shall be withdrawn if the evaluation of the designated licensed professional does not concur with the administrator that the condition constitutes an imminent safety hazard as could reasonably be expected to cause death or serious physical harm before the condition can be eliminated.

(5) If upon receipt of the findings of the designated licensed professional, the administrator concludes that any condition identified by such licensed professional constitutes an imminent safety hazard, the administrator shall immediately serve, or cause to be served, written notice or order upon the school district superintendent, principal, board of trustees or other person in charge describing the imminent safety hazard. The administrator shall also notify in writing the state superintendent of public instruction of such imminent safety hazard. Upon receipt of such written notice or order, the school district superintendent, principal, board of trustees, or other person in charge shall require all changes necessary to eliminate the imminent safety hazard be made, without delay and within the time specified by the administrator in the notice or order. If the condition presenting an imminent safety hazard is not corrected within the specified time, or if the administrator determines that the condition constituting such imminent safety hazard could reasonably be expected to cause death or serious physical harm before the condition can be eliminated, if he has not previously done so he shall determine the extent of the area where such condition exists and thereupon shall issue an order or notice requiring the school district superintendent, principal, board member, or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering, such area. The school district superintendent, principal, board member, or other

person in charge shall assist the administrator as necessary to post such areas to prevent injury.

(6) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes a serious safety hazard and issues a written order or notice requiring the conditions to be eliminated in not more than one (1) year, and the school superintendent, principal, board of trustees, or other person in charge contests the administrator's finding that the condition is a serious safety hazard, then the school superintendent, principal, board of trustees, or other person in charge shall have fourteen (14) days from the date of the issuance of the administrator's written order or notice to request a hearing to initiate a contested case under chapter 52, title 67, Idaho Code. If a hearing is requested, the superintendent of public instruction shall appoint a hearing officer to consider the contested case. All administrative proceedings under this subsection shall be expedited as necessary to assure that serious safety hazards are eliminated as required by this section if the administrator's initial determination that there was a serious safety hazard is confirmed in the contested case proceedings.

(7) The administrator shall monitor the school district's progress in addressing any identified imminent safety hazard or serious safety hazard to ensure that appropriate corrective action was taken. The administrator may extend the time for completing corrective action if he deems necessary.

(8) Upon completion of corrective action and verification of such completion by the division of building safety and the department of administration, the administrator shall provide a report to the state superintendent of public instruction, the local superintendent of schools and the chair of the local school board.

(9) Annual inspections of public school facilities conducted by the administrator under the provisions of this section shall be funded pursuant to legislative appropriation.

History.

I.C., § 39-8008, as added by 2000, ch. 352, § 1, p. 1182; am. 2001, ch. 326, § 5, p. 1143; am. 2002, ch. 126, § 2, p. 352; am. 2002, ch. 158, § 3, p. 458; am. 2003, ch. 16, § 10, p. 48; am. 2010, ch. 166, § 3, p. 340.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Division of building safety, § 67-2601A.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 126, in subsection (1), inserted “under this section” following “shall have authority,” substituted “at reasonable times to inspect, on an annual basis, such facilities for compliance” for “at reasonable times and to inspect such facilities for compliance”; added the last two clauses; in subsection (2), added the last sentence; and added present subsection (10).

The 2002 amendment, by ch. 158, in subsection (2), inserted “or serious safety hazard” following “an imminent safety hazard,” added present subsections (3) and (7), and redesignated former subsections (3) through (7) as present subsections (4) through (9), in present subsection (4), in the fourth sentence, substituted “board of trustees” for “board member”; in present subsection (6), in the first and second sentences, substituted “board of trustees” for “board member”.

The 2010 amendment, by ch. 166, added the last sentence in subsection (3); in subsection (4), in the first sentence, deleted “immediately notify the department of administration and request that the department of administration” following “he shall,” and inserted “within 2 working days” and “identified,” deleted the former second sentence, which read: “The department of administration shall, within two (2) working days, designate a licensed professional to independently evaluate the condition identified,” in the second sentence, substituted “administrator” for “director of the department of administration,” and throughout the last two sentences, substituted “designated licensed professional” for “department of administration”; deleted subsection (5), which dealt with duties of the department of administration regarding imminent safety hazards, and

redesignated subsections accordingly; and in the first sentence in subsection (5), substituted the language beginning “If upon receipt” and ending “constitutes an imminent safety hazard” for “Upon receipt of such notification in writing.”

Effective Dates.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

§ 39-8009. Injunction. — Upon failure of the district superintendent, principal, board of trustees, or other person in charge to comply with the requirements stated in any notice or order relating to an imminent safety hazard or serious safety hazard, the administrator may maintain an action in the name of the state of Idaho to enjoin the district superintendent, principal, board of trustees or other person in charge from acting in violation of such notice or order or from doing any action that interferes with the administrator carrying out his statutory duties. Such action shall be brought in the district court in which said acts are claimed to have been committed by filing a verified complaint setting forth said act. The court, if satisfied from such complaint or affidavits that the act complained of has been or is being committed and will persist, may issue a temporary writ without notice or bond enjoining the defendant from the commission of such act pending final disposition of the cause. The cause shall proceed as in other causes for injunction. If, at the trial, the commission of said act by the defendant be established and the court further finds it probable that the defendant will continue in such act or similar acts, the court shall enter a decree enjoining said defendant from committing said or similar acts.

History.

I.C., § 39-8009, as added by 2000, ch. 352, § 1, p. 1182; am. 2002, ch. 158, § 4, p. 458.

§ 39-8010. Appeal to building code advisory board [Idaho building code board]. — (1) The Idaho building code advisory board [Idaho building code board] shall, within ten (10) days after receipt of notice for an appeal, hear such appeal brought before it by a school district affected by any finding pursuant to this chapter that there exists in a school building a violation of the uniform school building safety code, provided however, that an appeal brought pursuant to this section shall not affect the ability of the administrator to obtain an injunction pursuant to [section 39-8009, Idaho Code](#). Such hearing shall be governed by the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board, other than code interpretations, are subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) The board shall provide reasonable interpretations of the codes enumerated in this chapter.

(3) Within ten (10) days of the conclusion of the hearing, the board shall render its findings and decisions in writing to the state superintendent of public instruction, the administrator of the division of building safety and the appealing district.

History.

[I.C., § 39-8010](#), as added by 2000, ch. 352, § 1, p. 1182; am. 2010, ch. 166, § 4, p. 340.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2010 amendment, by ch. 166, deleted “the director of the department of administration” following “superintendent of public instruction” in subsection (3).

Compiler's Notes.

The bracketed insertion in the section heading and in subsection (1) were added by the compiler to reflect the 2002 name change of the referenced agency. See § 39-4106.

§ 39-8011. Violations. — (1) If a school district, the district superintendent, principal, board of trustees, or other person in charge willfully violates the provisions of this chapter, the state superintendent of public instruction shall withhold such ensuing apportionments as are necessary to make repairs to abate the identified imminent safety hazard or serious safety hazard. Withheld funds, not to exceed one and one-half percent (1 ½%) of the district's appropriation, shall be disbursed only to pay for such repairs.

(2) If the funds that would be raised over two (2) fiscal years from applying the provisions of subsection (1) of this section are insufficient, in combination with all moneys that will be available in the district's school building maintenance allocation for the same period, to provide sufficient moneys to abate the identified imminent or serious safety hazard, then the administrator shall submit an application to abate said hazard to the Idaho public school facilities cooperative funding program panel pursuant to [section 33-909, Idaho Code](#).

(3) It is a misdemeanor to remove, without permission of the administrator, a notice or order posted pursuant to this chapter.

History.

[I.C., § 39-8011](#), as added by 2000, ch. 352, § 1, p. 1182; am. 2002, ch. 158, § 5, p. 458; am. 2006, ch. 311, § 10, p. 957; am. 2007, ch. 142, § 2, p. 412.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2006 amendment, by ch. 311, added subsection (2) and redesignated former subsection (2) as (3).

The 2007 amendment, by ch. 142, in subsection (2), substituted “maintenance allocation” for “maintenance fund” near the middle.

Legislative Intent.

Section 1 of S.L. 2006, ch. 311 provided: “**Legislative Findings and Intent** . The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted **Section 33-1612, Idaho Code**, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, **132 Idaho 559 (1999)**, the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under **Section 1, Article IX, of the Constitution** of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district’s relative ability to pay.”

Compiler’s Notes.

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

Effective Dates.

Section 3 of S.L. 2007, ch. 142 declared an emergency retroactively to July 1, 2006 and approved March 21, 2007.

§ 39-8012. Severability. — If any portion of this act, or the application of any provision of this act to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

History.

I.C., § 39-8012, as added by 2000, ch. 352, § 1, p. 1182.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 2000, ch. 352, which is compiled as §§ 39-8001 through 39-8006, and 39-8007 through 39-8012, and 39-4113.

Chapter 81

BASIN ENVIRONMENTAL IMPROVEMENT ACT

Sec.

39-8101. Short title.

39-8102. Policy of state.

39-8103. Definitions.

39-8104. Establishment of agreements or compacts for participation in basin project commission.

39-8105. Governor shall request reciprocal legislation or resolution.

39-8106. Basin project commission — Establishment — Composition — Powers — Duties — Funding.

39-8107. Basin fund and financing authority — Establishment — Administrators — Powers.

39-8108. Financing authority may issue notes and bonds — Related powers and duties.

39-8109. Notes and bonds — State will not impair vested rights.

39-8110. Limitation of liability — Notes and bonds are not a debt of the state.

39-8111. State may make grants to financing authority.

39-8112. Notes and bonds of financing authority are legal investments.

39-8113. Notes and bonds of financing authority are tax exempt.

39-8114. Chapter not a limitation of powers.

39-8115. Inconsistent laws — This chapter controls.

§ 39-8101. Short title. — This act may be known and cited as the “Basin Environmental Improvement Act.”

History.

I.C., § 39-8101, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Compiler’s Notes.

Chapters 66, 357 and 371 of S.L. 2001 each purported to enact a new chapter 81 in title 39. Accordingly, ch. 66 was codified as title 39, chapter 83 (§§ [39-8301] 39-8101 to [39-8302] 39-8102), ch. 357 was codified as title 39, ch. 82 (§§ [39-8201] 39-8101 to [39-8207] 39-8107) and ch. 371 was codified as title 39, chapter 81 (§§ 39-8101 to 39-8115). The compiler had inserted bracketed section designations in the enactments by ch. 66 and 357 to indicate the necessary change in numbering from the law as enacted. Those redesignations of the provisions enacted by S.L. 2001, ch. 357 were made permanent by S.L. 2005, ch. 25. The provisions enacted by S.L. 2001, ch. 66, § 1 were repealed by S.L. 2001, ch. 66, § 2, effective July 1, 2003.

The term “this act” refers to S.L. 2001, ch. 371, which is codified as § 39-3613 and 39-8101 to 39-8115.

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8102. Policy of state. — The Idaho legislature declares that environmental protection and improvement of the Coeur d’Alene basin to protect human health and enhance natural resources is very important to the state. Therefore, it is the policy of the state to provide in this chapter a system for environmental remediation, natural resource restoration and related measures to address heavy metal contamination in the basin. The system provided in this chapter is intended to protect and promote the health, safety and general welfare of the people of Idaho in a manner consistent with local, state, federal and tribal participation and resources.

History.

I.C., § 39-8102, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8103. Definitions. — As used in this chapter, unless a different meaning clearly appears from the context:

(1) “Administrator” means the administrator or a member of the board of administrators of the basin environmental improvement fund and financing authority.

(2) “Basin” means the watershed of Coeur d’Alene Lake within the counties of Shoshone, Kootenai and Benewah in the state of Idaho.

(3) “Basin environmental improvement fund and financing authority” or “financing authority” means the entity established by the authority of this chapter, and agreements, compacts, reciprocal legislation or resolutions with or by the United States of America, the Coeur d’Alene tribe or the state of Washington to accept and invest funds and finance the activities of the basin project.

(4) “Basin environmental improvement project” or “basin project” means the environmental and natural resources restoration and related measures regarding heavy metal contamination in the basin undertaken by the commission.

(5) “Basin environmental improvement project commission” or “commission” means the entity organized by the authority of this chapter and agreements, compacts, reciprocal legislation or resolutions with or by the United States of America, the Coeur d’Alene tribe or the state of Washington to implement the basin project.

(6) “Board of administrators” or “administrators” means the administrator or board of administrators of the basin environmental improvement fund and financing authority.

(7) “Board of commissioners” or “commission” means the board of commissioners of the basin environmental improvement project commission.

(8) “Bonds” or “notes” or “bond anticipation notes” or “other obligations” means any bonds, notes, debentures, interim certificates or

other evidence of financial indebtedness issued by the financing authority pursuant to this chapter.

(9) “Commissioner” means a member of the board of commissioners of the basin environmental improvement project commission.

(10) “Executive director” means the executive director of the basin environmental improvement project commission.

History.

I.C., § 39-8103, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8104. Establishment of agreements or compacts for participation in basin project commission. — The director of the department of environmental quality and the attorney general of the state of Idaho or their delegates shall represent the state of Idaho in negotiations with representatives of the state of Washington, the Coeur d’Alene tribe and the United States of America for the purpose of reaching agreements or compacts between the state of Idaho and any or all of the other named governments regarding participation in the basin project commission and the basin financing authority, for the purpose of providing for environmental remediation and natural resource restoration in the Coeur d’Alene basin in a manner consistent with local, state, federal and tribal authorities and resources; provided however, that any agreement or compact entered into on behalf of the named governments shall not be binding or obligatory upon any of those governments until the agreement or compact is approved by the requisite named governments. The governor of the state of Idaho may enter into any agreement or compact consistent with this chapter.

History.

I.C., § 39-8104, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Director of department of environmental quality, § 39-105.

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8105. Governor shall request reciprocal legislation or resolution.

— The governor of the state of Idaho shall advise the chairman of the Coeur d'Alene tribe, the governor of the state of Washington and the president of the United States of America of the enactment of this chapter and request that, if necessary, reciprocal resolutions or legislation be enacted by those governments to authorize negotiation and entry into agreements or compacts regarding participation in the basin environmental improvement project commission and financing authority.

History.

I.C., § 39-8105, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8106. Basin project commission — Establishment — Composition — Powers — Duties — Funding. — (1) The basin environmental improvement project commission is hereby created and shall become operational when the director of the department of environmental quality, by execution of an appropriate order, determines that:

(a) Significant funds from any source have been provided to the basin improvement fund and financing authority; or

(b) Any one (1) or more agreements or compacts have been entered into between the state of Idaho and the state of Washington, the Coeur d'Alene tribe or the United States of America providing for participation in the basin project commission and financing authority.

(2) Any agreement or compact providing for participation in the basin project commission and financing authority shall be consistent with the terms of this chapter.

(3) The board of commissioners of the basin project commission shall include one (1) representative of the state of Idaho and one (1) representative from each of the county commissions of Shoshone, Kootenai and Benewah counties of the state of Idaho as appointed by the governor of the state of Idaho. Upon participation of the state of Washington, the Coeur d'Alene tribe or the United States of America through agreement or compact, the board of commissioners shall also include, according to such participation: one (1) representative of the state of Washington appointed by the governor of Washington; one (1) tribal council member of the Coeur d'Alene tribe appointed by the council of the Coeur d'Alene tribe; and one (1) representative of the United States of America appointed by the president of the United States of America.

(4) The commission shall act by majority vote except that the vote of any commissioner representative of the state of Idaho, the Coeur d'Alene tribe or the United States of America, or the unanimous vote of all three (3) commissioners representing Shoshone, Kootenai and Benewah counties, may veto any majority vote, in which event the action is not valid. The fiduciary duties of each commissioner shall be to their respective federal,

tribal, state, or local governmental entity and such duties shall not disqualify any commissioner from full participation in any commission action. The commission may establish an advisory group to provide local citizen input to the commission in the performance of its duties. The commission shall distribute and publish a public involvement policy, to include procedures to assure adherence to the open meeting law and the public records act.

(5) The commission shall adopt as the basin project workplan a record of decisions approved pursuant to the federal comprehensive environmental responsibility [response,] compensation and liability act of 1980 (CERCLA), as amended, by the environmental protection agency of the United States of America, the department of environmental quality of the state of Idaho and, upon its participation, the Coeur d'Alene tribe, for environmental remediation and related measures pertaining to contamination by heavy metals in the basin. Amendment of the basin project workplan shall be made by the commission upon approval of the United States environmental protection agency, the Idaho department of environmental quality and the Coeur d'Alene tribe.

(6) The commission shall, to the extent that funds are available from the financing authority and any other source, implement the basin project workplan.

(7) The commission may select institutional control measures in implementation of the basin project workplan. The measures shall be adopted and implemented by appropriate local and tribal governments as a condition of remediation or restoration activities within those jurisdictions.

(8) The commission shall appoint an executive director to administer the basin project.

(9) The commission shall annually fix and determine, consistent with the basin project workplan and its schedule, the priorities of the basin project, the amount of money required from the financing authority, federal grants and taxation for implementing the basin project priorities including costs of construction and other activities, costs of operation and maintenance of the work, equipment of the basin project, and costs of administration.

(10) The commission shall have, within the basin, the authority of a board of commissioners of a flood control district as provided in chapter 31, title 42, Idaho Code, and the authority of a board of commissioners of a drainage district as provided in chapters 29 and 30, title 42, Idaho Code.

(11) The commission shall have the following powers and duties which may be exercised through the executive director of the basin project commission:

- (a) To employ personnel as may be necessary to carry out the purposes and objectives of the basin project commission;
- (b) To sue and be sued in the name of the basin project commission and to make and execute contracts and other instruments necessary or convenient to the exercise of its power;
- (c) To manage and conduct the business and affairs of the basin project commission, both within and without the basin;
- (d) To design, construct, operate and maintain structural works and actions as provided by the basin project workplan or procure or contract for the performance of those works and actions or portions thereof by any local, state, tribal or federal governmental entity or any private entity or individual;
- (e) To prescribe the duties of officers, agents and employees as may be required;
- (f) To establish the fiscal year of the basin project commission, to keep records of all business transactions of the basin project commission and to provide an annual public accounting of all expenditures;
- (g) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any real or personal property, and improve any properties acquired; to receive income from properties and to expend the income in carrying out the purposes and provisions of the basin project commission; and to lease any of its property or interest therein in furtherance of the purposes and provisions of the basin project commission;
- (h) To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over basin project property, as

shall be determined by the commission to be in the best interests of the basin project;

(i) To convey by deed, bill of sale, or other appropriate instrument all of the estate and interest of the basin project commission, in any real or personal property;

(j) To enter into contracts or agreements with the United States of America or any of its agencies, the states of Idaho or Washington or any of their agencies or political subdivisions or the Coeur d'Alene tribe or any of its agencies or subdivisions or private entities or individuals and to cooperate with those governments, agencies, subdivisions, private entities or individuals in effectuating, promoting and accomplishing the purposes of the basin project;

(k) To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided in this chapter;

(l) To assume, administer and maintain pursuant to any agreement or contract entered into in accordance with this chapter any environmental remediation or restoration measure within the basin undertaken by or in cooperation with the United States of America or any of its agencies, the states of Idaho or Washington or any of their agencies or subdivisions, or the Coeur d'Alene tribe or any of its agencies or subdivisions, or any combinations thereof;

(m) To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States of America or any of its agencies, or the states of Idaho or Washington or any of their agencies or political subdivisions, or the Coeur d'Alene tribe or any of its agencies or subdivisions, or private entities or individuals, or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations;

(n) To exercise all other powers necessary or helpful in carrying out the purposes and provisions of the basin project commission as provided in this chapter and by agreements or compacts between the states of Idaho and Washington, the Coeur d'Alene tribe and the United States of America.

History.

I.C., § 39-8106, as added by 2001, ch. 371, § 2, p. 1295; am. 2002, ch. 39, § 1, p. 87; am. 2003, ch. 220, § 1, p. 570.

STATUTORY NOTES

Compiler's Notes.

The open meetings law, referred to near the end of subsection (4), is codified as § 74-201 et seq.

The public records act, referred to at the end of subsection (4), is codified as §74-101 et seq.

The bracketed insertion in subsection (5) was added by the compiler to correct the name of the referenced federal act. See 42 USCS § 9601 et seq.

For more on the basin environmental improvement project commission, see <http://www.basincommission.com>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

Section 2 of S.L. 2002, ch. 39 declared an emergency. Approved February 19, 2002.

Section 2 of S.L. 2003, ch. 220 declared an emergency. Approved April 4, 2003.

§ 39-8107. Basin fund and financing authority — Establishment — Administrators — Powers. — (1) The basin environmental improvement fund and financing authority is hereby created and shall become operational when the director of the department of environmental quality, by execution of an appropriate order, determines that significant funds have been provided to the financing authority from any source, or any one (1) or more agreements or compacts between the state of Idaho and the state of Washington, the Coeur d'Alene tribe or the United States of America providing for participation in the basin project commission and financing authority. The financing authority shall be an independent public body corporate and politic within the meaning of section 1, article viii, of the constitution of the state of Idaho, with no power to levy taxes or to obligate the general fund of the state of Idaho.

(2) The administrator or board of administrators of the financing authority shall consist of one (1) representative appointed by the governor of the state of Idaho. Upon participation in the basin project by agreement or compact, one (1) representative shall be appointed by the council of the Coeur d'Alene tribe, one (1) representative shall be appointed by the governor of the state of Washington and one (1) representative shall be appointed by the president of the United States of America. Appointments shall be made on the basis of demonstrated investment and financial management expertise. Each administrator shall serve at the pleasure of his or her respective appointing authority and may be removed and replaced at any time. Administrators shall not be compensated. Two (2) or more administrators shall constitute a board and may act by majority vote. Meetings shall be held whenever a majority of administrators so request. The administrator or board of administrators shall direct the activities of the financing authority.

(3) The funds of the financing authority may include moneys and any income paid in settlement of any claims or lawsuits regarding heavy metals contamination in the basin, annual appropriations by the states of Idaho and Washington or the Coeur d'Alene tribe, receipts from the issuance of bonds and any other source, public or private. To the extent allowed by law, the

funds of the financing authority shall not be considered federal funds and shall be available for use as state matching funds for federal grants.

(4) The financing authority may administer its funds to maximize income to fund the basin project. The financing authority is hereby authorized to invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in: (a) Bonds, notes and other obligations of the United States of America or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligations; (b) Money market funds which are insured or the assets of which are limited to obligations of the United States of America or any agency or instrumentality thereof; (c) Time certificates of deposit and savings accounts; and

(d) Commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service.

(5) The financing authority may contract for services deemed necessary to carry out its duties including, but not limited to, financial, legal and accounting services.

(6) The financing authority may provide moneys from its funds to the basin project commission not to exceed such amounts as annually may be requested by the basin project commission.

(7) The financing authority shall establish its fiscal year, keep records of all investments, expenditures and business transactions and provide for an annual public accounting.

(8) The financing authority may exercise all other powers necessary or appropriate to carry out its corporate purposes including, without limitation, the following: (a) To sue and be sued in its own name;

(b) To have an official seal and to alter the seal at its pleasure;

(c) To maintain an office at a place or places within this state as it may designate; (d) To hire officers, agents and employees as may be required and to prescribe its duties; (e) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions; (f) To obtain insurance against any loss in connection with its property and other assets in amounts and from insurers it deems desirable; (g) To borrow money and issue bonds and notes or other

evidences of indebtedness as hereinafter provided; and (h) To the extent permitted under its contract with the holders of bonds, notes and other obligations of the financing authority, to consent to any modification of any contract, lease or agreement of any kind to which the financing authority is a party.

History.

I.C., § 39-8107, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8108. Financing authority may issue notes and bonds — Related powers and duties. — (1) The financing authority may issue from time to time its notes and bonds in a principal amount as the financing authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the financing authority, establishment of reserves to secure notes and bonds, and all other expenditures of the financing authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The financing authority may issue:

(a) Bonds or notes, in one (1) or more series, to finance the basin project or any portion or portions thereof;

(b) Notes in anticipation of appropriations or other revenues;

(c) Notes to renew notes; and

(d) Bonds to pay notes, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be:

(i) Exchanged for bonds to be refunded; or

(ii) Sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(3) Every issue of its notes and bonds shall be special obligations of the financing authority payable out of such fund or funds as shall be specified by the financing authority.

(a) The notes and bonds shall be authorized by resolution or resolutions of the financing authority, shall bear a date or dates and shall mature at a time or times as the resolution or resolutions may provide, except that no note shall mature more than one (1) year from the date of its issue and no bond shall mature more than thirty (30) years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall

bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption as the resolution or resolutions may provide. The notes and bonds of the financing authority may be sold by the financing authority, at public or private sale, at a price or prices, at, above, or below par, as the financing authority shall determine.

(b) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(i) Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(ii) Pledging all or any part of the assets of the financing authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to agreements with noteholders or bondholders as may then exist;

(iii) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(iv) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied;

(v) Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds;

(vi) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(vii) Limitations on the amount of moneys to be expended by the financing agency for operating expenses of the financing authority;

(viii) Vesting in a trustee's or trustees' property, rights, powers and duties in trust as the financing authority may determine, which may include any or all of the rights, powers and duties of the trustee

appointed by the bondholders pursuant to this chapter, and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;

(ix) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the financing authority to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of a default, including as a matter of right the appointment of a receiver; provided however, that these rights and remedies shall be consistent with this chapter and the laws of the state of Idaho;

(x) Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(c) Any pledge made by the financing authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the financing agency shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the financing authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(d) Neither any administrator of the financing authority nor any other person executing the notes or bonds are subject to any personal liability or accountability by reason of the issuance thereof.

(e) The financing authority, subject to agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the financing authority, which shall thereupon be canceled, at a price not exceeding:

(i) If the notes or bonds are then redeemable, the redemption price, including redemption premium, if any, then applicable plus accrued interest to the next interest payment thereon; or

(ii) If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(f) In the discretion of the financing authority, the bonds may be secured by a trust indenture by and between the financing authority and a corporate trustee which may be any trust company or bank having the power of a trust company in the state. The trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the financing authority in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The financing authority may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the financing agency. If the bonds are secured by a trust indenture, the bondholders have no authority to appoint a separate trustee to represent them.

(g) Whether or not the notes and bonds are of a form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning, and for all the purposes, of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(h) In case any of the administrators or officers of the financing authority whose signatures appear on any notes or bonds or coupons shall cease to be administrators or officers before the delivery of the notes or bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the administrators or officers had remained in office until delivery.

(4) The financing authority may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this chapter, including the advance refunding of obligations as provided by [section 57-504, Idaho Code](#), and including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of the financing authority. The issuance of the obligations, the maturities and other details thereof, the

rights of the holders thereof, and the rights, duties and obligations of the financing authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate.

(5) Refunding obligations issued as provided in subsection (4) of this section may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing the same, to the payment of any interest on the refunding obligations and any expenses in connection with refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

(6) All funds of the financing authority except as otherwise authorized or provided in this chapter shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the state of Idaho or the national banking association. The moneys in the accounts shall be paid out on checks signed by the chair of the board of administrators or other officers or employees of the financing authority as the administrators authorize. All deposits of the moneys shall, if required by the financing authority, be secured by obligations of the United States of America, of the state or of any municipalities or political subdivisions or agencies of the state at a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give security for the deposits.

(7) Notwithstanding the provisions of this section, the financing authority may contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment and payment of any moneys of the

financing authority and of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of the moneys may be secured in the same manner as moneys of the financing authority, and all banks and trust companies are authorized to give security for the deposits.

(8) The financing authority may contract with the holders of bonds or notes with respect to the rights of such holders in the event of a default in the payment of principal or interest on such bonds or notes.

History.

I.C., § 39-8108, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8109. Notes and bonds — State will not impair vested rights. —

The state pledges to and agrees with the holders of any notes or bonds issued under this chapter that the state will not limit or alter the rights hereby vested in the financing authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and remedies of the holders until the notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The financing authority may include this pledge and agreement of the state in any agreement with the holders of the notes or bonds.

History.

I.C., § 39-8109, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8110. Limitation of liability — Notes and bonds are not a debt of the state. — The notes, bonds or other obligations of the financing authority are not an indebtedness or obligation of the state of Idaho, or of any department, board, commission, agency, political subdivision, body corporate and politic, or instrumentality of a municipality or county within the state, nor shall such notes, bonds or obligations of the financing authority constitute the giving or loaning of the credit of the state of Idaho, or of any department, board, commission, agency, political subdivision, body corporate and politic or instrumentality of a municipality or county within the state, nor shall they be payable out of any funds other than those of the financing authority; and the notes and bonds shall contain on the face thereof a statement to that effect.

History.

I.C., § 39-8110, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8111. State may make grants to financing authority. — The state may make grants of money or property to the financing authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers including, but not limited to, deposits to the reserve funds. This section does not limit any other power the state may have to make grants to the financing authority.

History.

I.C., § 39-8111, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8112. Notes and bonds of financing authority are legal investments. — The notes and bonds of the financing authority are legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law.

History.

I.C., § 39-8112, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8113. Notes and bonds of financing authority are tax exempt. —

The basin project commission and the financing authority perform essential governmental functions in the exercise of the powers conferred upon them under this chapter. The notes and bonds of the financing authority issued under this chapter, and the income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of the notes or bonds, are exempt from taxation by the state, municipalities and all other political subdivisions of the state. Any property acquired or used by the basin project commission consistent with this chapter are [is] exempt from taxation and assessments.

History.

I.C., § 39-8113, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the last sentence was added to correct the syntax of the sentence.

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

§ 39-8114. Chapter not a limitation of powers. — This chapter does not restrict or limit the powers which the basin project commission or financing authority might otherwise have under any laws of this state, and this chapter is cumulative to those powers. This chapter provides an additional and alternative method for actions authorized and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations. Contracts for the construction and acquisition of any facilities undertaken pursuant to this chapter need not comply with any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval is required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter.

History.

I.C., § 39-8114, as added by 2001, ch. 371, § 2, p. 1295.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 371 declared an emergency. Approved April 10, 2001.

Idaho Code § 39-8115

§ 39-8115. Inconsistent laws — This chapter controls. — If any provision of this chapter is inconsistent with the provisions of any other law, general, specific or local, the provisions of this chapter control.

History.

I.C., § 39-8115, as added by 2001, ch. 371, § 2, p. 1295.

Chapter 82

IDAHO SAFE HAVEN ACT

Sec.

39-8201. Title.

39-8202. Definitions.

39-8203. Emergency custody of certain abandoned children — Confidentiality — Immunity.

39-8204. Protective custody — Placement — Immunity.

39-8205. Shelter care hearing — Investigation — Adjudicatory hearing — Termination of parent-child relationship.

39-8206. Claim of parental rights — Procedure.

39-8207. Report to legislature.

§ 39-8201. Title. — This chapter shall be known as the “Idaho Safe Haven Act.”

History.

I.C., § 39-8101, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 68, p. 82.

STATUTORY NOTES

Compiler’s Notes.

Chapters 66, 357 and 371 of S.L. 2001 each purported to enact a new chapter 81 in title 39. Accordingly, ch. 66 was codified as title 39, chapter 83 (§§ [39-8301] 39-8101 to [39-8302] 39-8102), ch. 357 was codified as title 39, ch. 82 (§§ [39-8201] 39-8101 to [39-8207] 39-8107) and ch. 371 was codified as title 39, chapter 81 (§§ 39-8101 to 39-8115). The compiler had inserted bracketed section designations in the enactments by ch. 66 and 357 to indicate the necessary change in numbering from the law as enacted. Those redesignations of the provisions enacted by S.L. 2001, ch. 357 were made permanent by S.L. 2005, ch. 25. The provisions enacted by S.L. 2001, ch. 66, § 1 were repealed by S.L. 2001, ch. 66, § 2, effective July 1, 2003.

§ 39-8202. Definitions. — As used in this chapter, the following terms shall mean:

(1) “Custodial parent,” for the purposes of this chapter, means, in the absence of a court decree, the parent with whom the child resides.

(2) “Safe haven” means:

(a) Hospitals licensed in the state of Idaho; (b) Licensed physicians in the state of Idaho and staff working at their offices and clinics; (c) Advanced practice professional nurses, including certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code; (d) Physician assistants licensed pursuant to chapter 18, title 54, Idaho Code; (e) Medical personnel acting or serving in the capacity as a licensed provider, affiliated with a recognized Idaho EMS agency. For purposes of this act, “medical personnel” shall include those individuals certified by the department of health and welfare as: (i) First responders;

(ii) Emergency medical technicians — basic; (iii) Advanced emergency medical technicians — ambulance; (iv) Emergency medical technicians — intermediate; and (v) Emergency medical technicians — paramedic.

(f) A fire station operated by a city, a county, a tribal entity, a fire protection district or a volunteer fire department if there are personnel on duty.

History.

I.C., § 39-8102, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 69, p. 82; am. 2017, ch. 200, § 1, p. 502.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 200, rewrote the introductory paragraph in paragraph (2)(e), which formerly read: “Medical personnel when making an

emergency response to a ‘911’ call from a custodial parent, for the purpose of taking temporary physical custody of a child pursuant to the provisions of this act. For purposes of this act, ‘medical personnel’ shall include those individuals certified by the department of health and welfare as”; and added paragraph (2)(f).

Compiler’s Notes.

The words “this act” in subsection (e) refer to S.L. 2001, ch. 357, § 1 which is compiled as §§ 16-1513, 16-1608, 16-1609, 16-1634, 16-2007, and 39-8201 to 39-8207.

§ 39-8203. Emergency custody of certain abandoned children — Confidentiality — Immunity. — (1) A safe haven shall take temporary physical custody of a child, without court order, if the child is personally delivered to a safe haven, provided that:

(a) The child is no more than thirty (30) days of age; (b) The custodial parent delivers the child to the safe haven; and (c) The custodial parent does not express an intent to return for the child.

(2) If a safe haven takes temporary physical custody of a child pursuant to subsection (1) of this section, the safe haven shall: (a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health and safety of the child during the temporary physical custody including, but not limited to, delivering the child to a hospital for care or treatment; and (b) Immediately notify a peace officer or other person appointed by the court of the abandonment.

(3) The safe haven shall not inquire as to the identity of the custodial parent and, if the identity of a parent is known to the safe haven, the safe haven shall keep all information as to the identity confidential. The custodial parent leaving the child shall not be required to provide any information to the safe haven but may voluntarily provide information including, but not limited to, medical history of the parent(s) or the child.

(4) A safe haven with responsibility for performing duties under this section, and any employee, doctor, or other personnel working at the safe haven, are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a child and performing duties under this section.

(5) A custodial parent may leave a child with a safe haven in this state without being subjected to prosecution for abandonment pursuant to the provisions of title 18, Idaho Code, provided that the child was no more than thirty (30) days of age when it was left at the safe haven, as determined within a reasonable degree of medical certainty.

History.

I.C., § 39-8103, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 70, p. 82.

STATUTORY NOTES

Compiler's Notes.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

§ 39-8204. Protective custody — Placement — Immunity. — (1) Upon notification by a safe haven that a child has been abandoned pursuant to the provisions of this chapter, a peace officer or other person appointed by the court shall take protective custody of the child and shall immediately deliver the child to the care, control and custody of the department of health and welfare. Provided however, where the child requires further medical evaluation, care or treatment, the child shall be left in the care of a hospital and the peace officer or other person appointed by the court shall notify the court and prosecutor of the action taken and the location of the child so that a shelter care hearing may be held.

(2) The department of health and welfare shall place an abandoned child with a potential adoptive parent as soon as possible.

(3) A peace officer or other person appointed by the court who takes a child into custody under this section, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith or in violation of the provisions of this chapter.

History.

I.C., § 39-8104, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 71, p. 82.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

§ 39-8205. Shelter care hearing — Investigation — Adjudicatory hearing — Termination of parent-child relationship. — (1) A shelter care hearing shall be held pursuant to [section 16-1615, Idaho Code](#), and the department shall file a petition for adjudicatory hearing to vest legal custody in the department pursuant to [section 16-1621, Idaho Code](#), at or prior to the time set for shelter care hearing.

(2) A child protective investigation or criminal investigation shall not be initiated based on a claim of abandonment unless a claim of parental rights is made and the court orders the investigation.

(3) During the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall request assistance from law enforcement officials to investigate through the missing children information clearinghouse and other state and national resources to ensure that the child is not a missing child.

(4) An adjudicatory hearing shall be conducted pursuant to the provisions of [section 16-1619, Idaho Code](#), and [section 16-1621, Idaho Code](#).

(5) As soon as practicable following the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall petition to terminate the parental rights of the parent who abandoned the child at the safe haven and any unknown parent pursuant to [section 16-1624, Idaho Code](#), and in accordance with chapter 20, title 16, Idaho Code.

History.

[I.C., § 39-8105](#), as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 72, p. 82; am. 2005, ch. 391, § 56, p. 1263.

STATUTORY NOTES

Amendments.

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 25, redesignated this section from § 39-8105.

The 2005 amendment, by ch. 391, also redesignated this section from § 39-8105 and updated references to the revised chapter 16 of title 16.

§ 39-8206. Claim of parental rights — Procedure. — (1) A parent of the child may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of this chapter, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare. The vital statistics unit of the department of health and welfare shall maintain an abandoned child registry for this purpose which shall be subject to disclosure according to chapter 1, title 74, Idaho Code. The department shall provide forms for the purpose of filing a claim of parental rights, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. Any parent claiming a parental right of an abandoned child, abandoned pursuant to the provisions of this chapter, shall file the form with the vital statistics unit of the department of health and welfare. The form must be filled out completely and provide the name and address for service of the person asserting the parental claim and set forth the approximate date the child was left in a safe haven. The form must be signed by the person claiming the parental right and be witnessed before a notary public. The department shall record the date and time the claim of parental rights is filed with the department. The claim shall be deemed to be duly filed with the department as of the date and time recorded on the claim by the department. To be valid, a claim of parental rights must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child. Registration of notice of commencement of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of this section.

(2) Prior to the time set for hearing on the petition to terminate parental rights filed by the department of health and welfare, and prior to entry of an order terminating parental rights by the court, the department of health and welfare shall obtain and file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state

registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of claims of parental rights of abandoned children, abandoned pursuant to this chapter, and shall set forth the results of that search.

(3) If a claim of parental rights is made before an order terminating parental rights is entered by the court, notice pursuant to [section 16-2007, Idaho Code](#), will be required and the court shall hold the action for involuntary termination of parental rights in abeyance for a period of time not to exceed sixty (60) days unless otherwise ordered by the court. During that period:

(a) The court shall order genetic testing to establish maternity or paternity, at the expense of the person or persons claiming the parental right.

(b) The department of health and welfare shall conduct an investigation pursuant to [section 16-2008, Idaho Code](#), and in those cases where a guardian ad litem has been appointed, the guardian ad litem shall have all rights, powers and duties as provided for in chapter 16, title 16, Idaho Code, and as provided for in chapter 20, title 16, Idaho Code.

(c) When indicated as a result of the investigation, a shelter care hearing shall be conducted by the court in accordance with [section 16-1615, Idaho Code](#), within forty-eight (48) hours, or at an earlier time if ordered by the court, to determine whether the child should remain in the physical custody of the department or be released to a parent or other third party.

(d) Further proceedings shall be conducted as the court determines appropriate. However, where a claim of parental rights is made before an order terminating parental rights is entered by the court, a parent shall not be found to have neglected or abandoned a child placed in accordance with this chapter solely because the child was left with a safe haven.

(4) If there is no showing that a parent has claimed a parental right to the child, the department of health and welfare shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of parental claims for children abandoned pursuant to the provisions of this chapter and that no parental

claim has been made. The certificate shall be filed with the court prior to the entrance of the final order of termination of parental rights.

History.

I.C., § 39-8106, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 73, p. 82; am. 2005, ch. 391, § 57, p. 1263; am. 2015, ch. 141, § 101, p. 379.

STATUTORY NOTES

Cross References.

State registrar of vital statistics, § 39-243.

Amendments.

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 25, redesignated this section from § 39-8106.

The 2005 amendment, by ch. 391, also redesignated this section from § 39-8106 and updated references to the revised chapter 16 of title 16.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the second sentence of subsection (1).

Compiler’s Notes.

The vital statistics unit of the department of health and welfare, referred to in this section, is the bureau of vital records and health statistics. See <http://www.healthandwelfare.idaho.gov/healthvitalrecordsandhealthstatistics/tabid/1504/default.aspx>.

§ 39-8207. Report to legislature. — The department of health and welfare shall evaluate the program and shall submit a written report on the program, including recommendations for revisions and improvements, to the senate health and welfare committee and the house of representatives health and welfare committee of the legislature of the state of Idaho no later than two (2) years after the effective date of this act.

History.

I.C., § 39-8107, as added by 2001, ch. 357, § 1, p. 1252; am. and redesign. 2005, ch. 25, § 74, p. 82.

STATUTORY NOTES

Compiler's Notes.

The phrase “effective date of this act”, refers to the effective date of S.L. 2001, ch. 357, which was July 1, 2001.

Chapter 83
GENETIC TESTING PRIVACY ACT

Sec.

39-8301. Short title.

39-8302. Definitions.

39-8303. Restrictions on employers.

39-8304. Enforcement.

§ 39-8301. Short title. — This chapter shall be known and may be cited as the “Genetic Testing Privacy Act.”

History.

I.C., § 39-8301, as added by 2006, ch. 293, § 1, p. 903.

STATUTORY NOTES

Prior Laws.

Former §§ 39-8301 and 39-8302, enacted as §§ 39-8101 and 39-8102 by S.L. 2001, ch. 66, § 1, were repealed by 2001, ch. 66, § 2, effective July 1, 2003.

§ 39-8302. Definitions. — As used in this chapter:

(1) “Blood relative” means a person’s biologically related parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece or first cousin.

(2) “DNA” means deoxyribonucleic acid, ribonucleic acid and chromosomes which may be analyzed to detect heritable diseases or conditions, including the identification of carriers, predicting risk of disease, or establishing a clinical diagnosis.

(3) “DNA sample” means any human biological specimen from which DNA can be extracted, or DNA extracted from such specimen.

(4) “Employer” means any person, partnership, limited liability company, association, corporation, labor organization, employment agency or nonprofit entity that employs five (5) or more persons including relatives, and including the legislative, executive and judicial branches of state government; any county, city, or any other political subdivision of the state; or any other separate unit of state or local government.

(5) “Genetic analysis” or “genetic test” means the testing or analysis of an identifiable individual’s DNA that results in information that is derived from the presence, absence, alteration or mutation of an inherited gene or genes, or the presence or absence of a specific DNA marker or markers. “Genetic analysis” or “genetic test” does not mean: (a) A routine physical examination;

(b) A routine chemical, blood or urine analysis; (c) A test to identify the presence of drugs or HIV infection; or (d) A test performed due to the presence of signs, symptoms or other manifestations of a disease, illness, impairment or other disorder.

(6) “Individual” means the person from whose body the DNA sample originated.

(7) “Person” means any person, organization or entity other than the individual.

(8) “Private genetic information” means any information about an identifiable individual that is derived from the presence, absence, alteration or mutation of an inherited gene or genes, or the presence or absence of a specific DNA marker or markers, and which has been obtained from a genetic test or analysis of the individual’s DNA or from a genetic test or analysis of a person’s DNA of whom the individual is a blood relative. “Private genetic information” does not include information that is derived from: (a) A routine physical examination;

(b) A routine chemical, blood or urine analysis; (c) A test to identify the presence of drugs or HIV infection; or (d) A test performed due to the presence of signs, symptoms or other manifestations of a disease, illness, impairment or other disorder.

History.

I.C., § 39-8302, as added by 2006, ch. 293, § 1, p. 903.

STATUTORY NOTES

Prior Laws.

Former §§ 39-8301 and 39-8302, enacted as §§ 39-8101 and 39-8102 by S.L. 2001, ch. 66, § 1, were repealed by 2001, ch. 66, § 2, effective July 1, 2003.

§ 39-8303. Restrictions on employers. — (1) Except as provided in subsection (2) of this section, an employer shall not, in connection with a hiring, promotion, retention or other related decision:

(a) Access or otherwise take into consideration private genetic information about an individual;

(b) Request or require an individual to consent to a release for the purpose of accessing private genetic information about the individual; (c) Request or require an individual or his blood relative to submit to a genetic test; or

(d) Inquire into the fact that an individual or his blood relative has taken or refused to take a genetic test.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, an employer may seek an order compelling the disclosure of private genetic information held by an individual or third party pursuant to subsection (2)(b) of this section in connection with: (i) An employment-related judicial or administrative proceeding in which the individual has placed his health at issue; or (ii) An employment-related decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment.

(b)(i) An order compelling the disclosure of private genetic information pursuant to this subsection (2) may only be entered upon a finding that: (A) Other ways of obtaining the private information are not available or would not be effective; and

(B) There is a compelling need for the private genetic information which substantially outweighs the potential harm to the privacy interests of the individual.

(ii) An order compelling the disclosure of private genetic information pursuant to this subsection (2) shall: (A) Limit disclosure to those parts of the record containing information essential to fulfill the objective of the order; (B) Limit disclosure to those persons whose need for the information is the basis of the order; and

(C) Include such other measures as may be necessary to limit disclosure for the protection of the individual.

History.

I.C., § 39-8303, as added by 2006, ch. 293, § 1, p. 903.

§ 39-8304. Enforcement. — (1) Whenever the attorney general has reason to believe that any employer is engaging, has engaged, or is about to engage in any act in violation of this chapter, the attorney general may bring an action in the name of the state against that employer:

(a) To obtain a declaratory judgment that the act violates the provisions of this chapter; (b) To enjoin any act that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice; (c) To recover on behalf of the state and its agencies actual damages or restitution; or (d) To recover civil penalties of up to twenty-five thousand dollars (\$25,000) per violation and reasonable expenses, investigative costs and attorney's fees.

(2) The penalties provided in this section are in addition to any other available remedy at law or equity.

(3) Any civil penalty imposed pursuant to this section shall be deposited in the state general fund.

History.

I.C., § 39-8304, as added by 2006, ch. 293, § 1, p. 903.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Chapter 84
TOBACCO MASTER SETTLEMENT AGREEMENT
COMPLEMENTARY ACT

Sec.

39-8401. Findings and purpose.

39-8402. Definitions.

39-8403. Certifications — Directory — Tax stamps.

39-8404. Agent for service of process.

39-8405. Reporting of information — Escrow installments.

39-8406. Penalties and other remedies.

39-8407. Miscellaneous provisions.

39-8408 — 39-8419. [Reserved.]

39-8420. Legislative findings and intent.

39-8421. Definitions.

39-8422. Certification of cigarette rolling machine operators.

39-8423. Requirements for certification.

39-8424. Violations — Attorney general and district court authority —
Revocation of certification.

39-8425. Rulemaking.

§ 39-8401. Findings and purpose. — The legislature finds that violations of Idaho's tobacco master settlement agreement act threaten the integrity of Idaho's master settlement agreement with leading tobacco product manufacturers, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations of Idaho's tobacco master settlement agreement act and thereby safeguard the master settlement agreement, the fiscal soundness of the state and the public health.

History.

I.C., § 39-8401, as added by 2003, ch. 33, § 2, p. 145.

STATUTORY NOTES

Cross References.

Tobacco master settlement agreement, § 39-7801 et seq.

Compiler's Notes.

Chapters 33 and 231 of S.L. 2003 each purported to enact a new chapter 84 in title 39. Accordingly, ch. 33 was codified as title 39, chapter 84 (§§ 39-8401 to 39-8407) and ch. 231 was codified as title 39, chapter 84[85] (§§ 39-8401 [39-8501] to 39-8404 [39-8504]). The chapter enacted by S.L. 2003, ch. 231 was subsequently amended and permanently redesignated as title 39, **chapter 85, Idaho Code**, by S.L. 2004, ch. 318.

For more on Master Settlement Agreement, see <http://www.ag.idaho.gov/tobacco/MasterSettlement.html>.

CASE NOTES

Cited *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109 (2010).

RESEARCH REFERENCES

ALR. — **Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various**

States, and State Statutes Implementing Agreement; Use and Distribution of
MSA Proceeds. 25 A.L.R.6th 435.

§ 39-8402. Definitions. — (1) “Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, “menthol,” “lights,” “kings,” and “100s,” and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) “Cigarette” has the same meaning as that term is defined in [section 39-7802\(d\), Idaho Code](#).

(3) “Commission” means the state tax commission for the state of Idaho.

(4) “Master settlement agreement” has the same meaning as that term is defined in [section 39-7802\(e\), Idaho Code](#).

(5) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

(6) “Participating manufacturer” has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto.

(7) “Qualified escrow fund” has the same meaning as that term is defined in [section 39-7802\(f\), Idaho Code](#).

(8) “Stamping agent” means a person who is authorized to wholesale cigarettes or is required to affix tax stamps to packages or other containers of cigarettes as well as any person who pays a tobacco products tax on “roll your own” tobacco, pursuant to chapter 25, title 63, Idaho Code.

(9) “Tobacco product manufacturer” has the same meaning as that term is defined in [section 39-7802\(i\), Idaho Code](#).

(10) “Units sold” has the same meaning as that term is defined in [section 39-7802\(j\), Idaho Code](#).

History.

I.C., § 39-8402, as added by 2003, ch. 33, § 2, p. 145; am. 2006, ch. 74, § 1, p. 227.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101 et seq.

Amendments.

The 2006 amendment, by ch. 74, in subsection (8), substituted “to wholesale cigarettes or is required” for “or required” and “as well as any person who pays a tobacco products tax on ‘roll your own’ tobacco, pursuant to” for “under.”

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited State v. Maybee, 148 Idaho 520, 224 P.3d 1109 (2010).

§ 39-8403. Certifications — Directory — Tax stamps. — (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a wholesaler, distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general no later than the thirtieth day of April each year, certifying, under penalty of perjury, that, as of the date of such certification, such tobacco product manufacturer is either: a participating manufacturer; or in full compliance with [section 39-7803\(b\), Idaho Code](#), including all quarterly installment payments required by [section 39-8405\(5\), Idaho Code](#).

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that were sold in the state at any time during the preceding calendar year, or that have been sold in the state at any time during the current calendar year, and shall:

(i) List, for each brand family, the number of units sold in the state during the preceding calendar year;

(ii) Note, by means of an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification;

(iii) Identify by name and address any other manufacturer of such brand families in the preceding calendar year or the current calendar year. The nonparticipating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general;

(c) In the case of a nonparticipating manufacturer, such certification shall further certify:

- (i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by [section 39-8404, Idaho Code](#);
- (ii) That such nonparticipating manufacturer has:
 - 1. Established and continues to maintain a qualified escrow fund;
 - 2. Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;
- (iii) That such nonparticipating manufacturer is in full compliance with [section 39-7803\(b\), Idaho Code](#), and this section, and any rules promulgated pursuant thereto.
- (iv)
 - 1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to [section 39-7803\(b\), Idaho Code](#), and all rules promulgated thereto;
 - 2. The account number of such qualified escrow fund and any subaccount number for the state of Idaho;
 - 3. The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing;
 - 4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to [section 39-7803\(b\), Idaho Code](#), and all rules promulgated thereto.
- (d) A tobacco product manufacturer may not include a brand family in its certification unless:
 - (i) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master

settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(ii) In the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of [section 39-7803\(b\), Idaho Code](#). Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of [section 39-7803\(b\), Idaho Code](#).

(e) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five (5) years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than September 30, 2003, the attorney general shall develop and publish on his website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section, and all brand families that are listed in such certifications, except as noted below.

(a) The attorney general shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subsections (1)(b) and (c) of this section, unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes in the case of a nonparticipating manufacturer that:

(i) Any escrow payment required pursuant to [section 39-7803\(b\), Idaho Code](#), for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(ii) Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family.

(d) Every stamping agent shall provide and update as necessary a mailing address and, where available, an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(3) It shall be unlawful for any person:

(a) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(b) To sell, offer or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(c) To acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of this subsection (3).

(4) Nothing in this chapter shall excuse payment of cigarette taxes under chapter 25, title 63, Idaho Code, by any person in regard to any package or other container of cigarettes not included in the directory but sold by that person.

(5) The attorney general may condition certification of a nonparticipating tobacco product manufacturer upon obtaining from the manufacturer its consent to be sued in Idaho district court for purposes of the state of Idaho enforcing any provisions of chapter 78 or 84, title 39, Idaho Code, or for the state bringing a released claim as that term is defined by subsection (g) of [section 39-7802, Idaho Code](#).

History.

I.C., § 39-8403, as added by 2003, ch. 33, § 2, p. 145; am. 2005, ch. 40, § 1, p. 160.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

For current directory of compliant tobacco product manufacturers and brand families, see http://www.ag.idaho.gov/tobacco/directory_main.html.

CASE NOTES

[Federal preemption.](#)

[Interstate commerce.](#)

Federal Preemption.

State's lawsuit against a company owned by a Native American for violations of this section and § 63-2503 was not subject to complete preemption by federal law because the state has authority to impose taxes on cigarette sales between tribe members and nonmembers. *Idaho v. Native Wholesale Supply Co.*, Case No. 08-CV-396-S-EJL, 2009 U.S. Dist. LEXIS 28688 (D. Idaho Apr. 6, 2009).

State has subject matter jurisdiction to enforce the provisions of this chapter and to prevent noncompliant cigarettes from being imported into Idaho because a Native American retailer's importation of noncompliant cigarettes into Idaho was an off-reservation activity, and the retailer's activities were not limited to reservations. *State v. Native Wholesale Supply Co.*, 155 Idaho 337, 312 P.3d 1257 (2013).

Interstate Commerce.

This section clearly prohibits selling, or offering for sale, noncompliant cigarettes, in Idaho. It does not facially discriminate against interstate commerce, but prohibits both intrastate and interstate parties from selling,

or offering for sale, such cigarettes. *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109, cert. denied, 562 U.S. 835, 131 S. Ct. 150, 178 L. Ed. 2d 37 (2010).

§ 39-8404. Agent for service of process. — (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and Idaho's tobacco master settlement agreement act, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of such agent to, and to the satisfaction of, the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty (30) calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five (5) calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of said termination within five (5) calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state, without appointing or designating an agent as herein required, shall be deemed to have appointed the secretary of state as such agent and may be proceeded against in courts of this state by service of process upon the secretary of state; however, the appointment of the secretary of state as such agent shall not satisfy the condition precedent to having its brand families listed or retained in the directory.

History.

I.C., § 39-8404, as added by 2003, ch. 33, § 2, p. 145.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

Tobacco master settlement agreement, § 39-7801 et seq.

§ 39-8405. Reporting of information — Escrow installments. — (1) Not later than twenty (20) calendar days after the end of each calendar quarter, and more frequently if so directed by the attorney general, each stamping agent shall submit such information as the attorney general requires to facilitate compliance with this chapter including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the attorney general, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five (5) years.

(2) The commission is authorized to disclose to the attorney general any information received under this chapter or Idaho's tobacco master settlement agreement act and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The commission and attorney general shall share with each other the information received under this chapter or chapter 25, title 63, Idaho Code, and may share such information with other federal, state or local agencies only for purposes of enforcement of this chapter, Idaho's tobacco master settlement agreement act, or corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Idaho's tobacco master settlement agreement act, of the amount of money in such fund, exclusive of interest, and the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to this chapter, the attorney general may require a stamping agent or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as

is necessary to enable the attorney general to determine whether a tobacco product manufacturer or stamping agent is in compliance with this chapter.

(5) To promote compliance with the provisions of this chapter, the attorney general may promulgate rules requiring a tobacco product manufacturer subject to the requirements of [section 39-7803\(b\), Idaho Code](#), to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

History.

[I.C., § 39-8405](#), as added by 2003, ch. 33, § 2, p. 145.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Tobacco master settlement agreement, § 39-7801 et seq.

§ 39-8406. Penalties and other remedies. — (1) Each stamp affixed, each sale or offer to sell, and each cigarette possessed in violation of [section 39-8403\(3\), Idaho Code](#), shall constitute a separate violation. For each violation hereof, the district court may impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or five thousand dollars (\$5,000) upon a determination of violation of [section 39-8403\(3\), Idaho Code](#), or any rule adopted pursuant thereto.

(2) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated [section 39-8403\(3\), Idaho Code](#), or any rule adopted pursuant thereto, the commission may revoke or suspend the license of any stamping agent in the manner provided by law.

(3) Any cigarettes that have had stamps affixed, been sold, offered for sale or possessed for sale in this state in violation of [section 39-8403\(3\)](#) shall be deemed contraband under [section 63-2513, Idaho Code](#), and such cigarettes shall be subject to seizure and forfeiture by the commission as provided in such section, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

(4) The attorney general may seek an injunction to prevent or restrain a threatened or actual violation of [section 39-8403\(3\)](#), [39-8405\(1\)](#) or [39-8405\(4\)](#), [Idaho Code](#), by a stamping agent and to compel the stamping agent to comply with such subsections.

(5) A person who violates [section 39-8403\(3\), Idaho Code](#), engages in an unfair and deceptive trade practice in violation of the Idaho consumer protection act, chapter 6, title 48, [Idaho Code](#).

History.

[I.C., § 39-8406](#), as added by 2003, ch. 33, § 2, p. 145.

§ 39-8407. Miscellaneous provisions. — (1) A determination of the attorney general to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act.

(2) No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless such person has certified, in writing, that such person will comply fully with this chapter.

(3) For the year 2003, the first report of stamping agents required by [section 39-8405\(1\), Idaho Code](#), shall be due thirty (30) calendar days after the effective date of this chapter; the certifications by a tobacco product manufacturer described in [section 39-8403\(1\), Idaho Code](#), shall be due forty-five (45) days after such effective date; and the directory described in [section 39-8403\(2\), Idaho Code](#), shall be published or made available within ninety (90) calendar days after such effective date.

(4) The commission and the attorney general may promulgate rules necessary to effect the purposes of this chapter.

(5) In any action brought by the attorney general to enforce this chapter, the attorney general shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund. Unless otherwise expressly provided the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(7) If a court of competent jurisdiction finds that the provisions of this chapter and of the Idaho tobacco master settlement agreement act conflict and cannot be harmonized, then such provisions of the Idaho tobacco master settlement agreement act, chapter 78, title 39, Idaho Code, shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter causes the Idaho tobacco master settlement agreement act to no longer constitute a qualifying or model statute, as those

terms are defined in the master settlement agreement, then that portion of this chapter shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

History.

I.C., § 39-8407, as added by 2003, ch. 33, § 2, p. 145.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Compiler's Notes.

The phrase “the effective date of this chapter,” and similar phrases, in subsection (3) refers to the effective date of S.L. 2003, ch. 33, which was July 1, 2003.

CASE NOTES

Attorney Fees.

When the state sued an online proprietor who sold noncompliant cigarettes to Idaho consumers without a permit in violation of this chapter, the district court properly awarded the state summary judgment and attorney fees. Subsection (5) of this section applies and is interpreted to permit the attorney general to recover attorney fees when the attorney general is the prevailing party. *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109, cert. denied, 562 U.S. 835, 131 S. Ct. 150, 178 L. Ed. 2d 37 (2010).

§ 39-8408 — 39-8419. [Reserved.]

§ 39-8420. Legislative findings and intent. — (1) The legislature finds that the commercial use of cigarette rolling machines in this state has the potential to circumvent various requirements under Idaho law related to the manufacturing, marketing, sale and taxation of cigarettes. Such use is to the detriment of the fiscal soundness of the state and the public health.

(2) This legislation is intended to ensure that cigarette rolling machine operators comply with applicable Idaho laws governing the manufacturing, marketing, sale and taxation of cigarettes and that the use of such cigarette rolling machines will not circumvent these laws and undercut the purposes for which they were enacted.

History.

I.C., § 39-8420, as added by 2012, ch. 206, § 1, p. 548.

§ 39-8421. Definitions. — As used in sections 39-8420 through 39-8425, Idaho Code:

(1) The definitions set forth in section 39-8402, Idaho Code, of the Idaho tobacco master settlement agreement complementary act, and in this section, apply to sections 39-8420 through 39-8425, Idaho Code.

(2) “Cigarette rolling machine” means any machine or device that has the capability to produce at least one hundred fifty (150) cigarettes in less than thirty (30) minutes.

(3) “Cigarette rolling machine operator” means any person who owns or leases or otherwise has available for use a cigarette rolling machine and makes such a machine available for use by another person in a commercial setting in order to manufacture a cigarette. No person shall be deemed a cigarette rolling machine operator based solely upon that person’s manufacture, sale, enabling, disabling, or repair of a cigarette rolling machine.

(4) “Minor” has the same meaning as that term is defined in section 39-5702(6), Idaho Code.

(5) “Person” means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, business entities, and any other legal entity, or any other group associated in fact although not a legal entity.

(6) “Tobacco products” means any substance that contains tobacco, including but not limited to cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers, or smokeless tobacco.

History.

I.C., § 39-8421, as added by 2012, ch. 206, § 2, p. 548; am. 2020, ch. 318, § 18, p. 905.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 318, deleted “of the Idaho prevention of minor’s access to tobacco act” at the end of subsection (4); and rewrote subsection (6), which formerly read: “”Tobacco products’ has the same meaning as that term is defined in [section 39-5702\(13\), Idaho Code](#), of the Idaho prevention of minors’ access to tobacco act.”

§ 39-8422. Certification of cigarette rolling machine operators. — A cigarette rolling machine operator may not locate at, offer, or make a cigarette rolling machine available for use, or offer for sale cigarettes manufactured by the operator or any other person at the location of the operator's cigarette rolling machine, until the operator has first been certified by the attorney general upon a form prescribed by the attorney general. The attorney general shall annually certify a cigarette rolling machine operator, but only after he has obtained adequate certification from the operator, as set forth in [section 39-8423, Idaho Code](#), and has been provided by the operator sufficient information identifying the operator, the location, the make and brand of the operator's cigarette rolling machine, and the person(s) from whom the operator will purchase its tobacco for purposes of the operator's cigarette rolling machine's manufacturing of cigarettes.

History.

[I.C., § 39-8422](#), as added by 2012, ch. 206, § 3, p. 548.

§ 39-8423. Requirements for certification. — (1) Before a cigarette rolling machine operator may be certified by the attorney general, the operator shall certify, under penalty of perjury, that:

- (a) All tobacco to be used in the operator's cigarette rolling machine, regardless of the tobacco's label or description thereof, will only be of a brand family and of a tobacco product manufacturer listed on the directory maintained by the attorney general pursuant to [section 39-8403, Idaho Code](#), of the Idaho tobacco master settlement agreement complementary act;
- (b) All applicable state tobacco taxes have been paid, as required by the cigarette and tobacco products tax act, chapter 25, title 63, Idaho Code, for the tobacco to be used in the operator's cigarette rolling machine;
- (c) The operator has obtained, and has a current permit issued, pursuant to [section 39-5704, Idaho Code](#);
- (d) All cigarette tubes used in the operator's cigarette rolling machine shall be constructed of paper of a type determined by the attorney general, pursuant to regulations to be promulgated by the attorney general, to reduce the likely ignition propensity of cigarettes to be made with such tubes;
- (e)(i) At any location where the operator has a cigarette rolling machine, seventy-five percent (75%) of the revenues of the operator's total merchandise sales at that location are comprised of tobacco products;
or
(ii) The location where the cigarette rolling machine is situated prohibits minors from entering the premises;
- (f) The operator will not sell cigarettes or make a cigarette rolling machine available for use, in any quantity less than twenty (20) cigarettes per transaction, except for samples prepared in connection with the purchase or prospective purchase of tobacco and consumed or destroyed at the premises where the cigarette rolling machine is located; and

(g) The operator will not accept or allow its cigarette rolling machine to be used to manufacture cigarettes with tobacco that was not first purchased or obtained from the operator and for which the operator will timely and properly report to the attorney general as set forth in subsection (2) of this section.

(2) After being certified, the cigarette rolling machine operator shall annually certify, under penalty of perjury, to the provisions set forth in subsection (1) of this section. Additionally, the operator shall quarterly report to the attorney general on a form prescribed by the attorney general:

(a) The number of cigarettes that the operator's cigarette rolling machine manufactured during that quarter;

(b) The brand families, the tobacco product manufacturer of each brand family, and the ounces of tobacco of each such brand family that were used in the operator's cigarette rolling machine to manufacture cigarettes during the quarter; and

(c) The person or persons from whom the operator purchased or obtained the tobacco that the operator's machine used to manufacture cigarettes.

(3) The cigarette rolling machine operator's annual certification shall be due to the attorney general no later than the thirtieth day of April each year.

(4) All tobacco certified under subsection (1)(a) of this section shall be deemed to be "roll-your-own" tobacco for purposes of [section 39-7802\(d\), Idaho Code](#), of the Idaho tobacco master settlement agreement act.

(5) A cigarette rolling machine operator shall not be required to comply with the provisions of subsection (1)(d) of this section until the attorney general has promulgated rules implementing this subsection, pursuant to [section 39-8425, Idaho Code](#), and the effective date provided for such rules has passed.

History.

[I.C., § 39-8423](#), as added by 2012, ch. 206, § 4, p. 548; am. 2020, ch. 318, § 19, p. 905.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 318, deleted “of the Idaho prevention of minors’ access to tobacco act” at the end of paragraph (1)(c) and substituted “subsection (1)(d) of this section” for “[section 39-8423\(1\)\(d\), Idaho Code](#)” near the beginning of subsection (5).

§ 39-8424. Violations — Attorney general and district court authority — Revocation of certification. — (1) Any person who violates any provision of this act, or any certification provided by the attorney general, is subject to the imposition of a civil penalty by the district court in the amount set forth in **section 39-8406(1), Idaho Code**. The attorney general and the district courts shall have the same authority in enforcing and carrying out the provisions of this section as is granted the attorney general and district courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho tobacco master settlement agreement complementary act.

(2) In addition to the authority set forth in subsection (1) of this section:

(a) The district court shall have the authority to revoke the cigarette rolling machine operator's permit issued by the department of health and welfare, pursuant to chapter 57, title 39, Idaho Code, for a period of at least three (3) months but up to one (1) year.

(b)(i) The attorney general may suspend or revoke a cigarette rolling machine operator's certification for violation of any provisions of this act or the operator's certification or any rule adopted by the attorney general pursuant to this act.

(ii) A determination by the attorney general to deny a certification application or to suspend or revoke a cigarette rolling machine operator's certification shall be subject to review in the manner prescribed by Idaho's administrative procedure act, chapter 52, title 67, Idaho Code. In instances where a certification is suspended or revoked, the cigarette rolling machine operator may not thereafter use or make the machine available for use and shall have ten (10) days after receiving actual notice that its certification has been suspended or revoked to remove the machine from the operator's commercial premises. If the operator fails to remove the cigarette rolling machine within this time period, the machine shall be deemed contraband and subject to seizure and forfeiture. During the period in which the operator's certification has been suspended or revoked, the operator

may store the machine at a storage site as long as the machine is not used by or available to persons for use to manufacture cigarettes.

(3) No person who manufactures a cigarette using a cigarette rolling machine shall sell or offer that cigarette for sale in this state. This prohibition shall not apply to any person holding a federal license as a cigarette manufacturer.

(4) Unless expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties available under all other laws of this state.

History.

I.C., § 39-8424, as added by 2012, ch. 206, § 5, p. 548; am. 2020, ch. 318, § 20, p. 905.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 318, in subsection (2), in paragraph (a), deleted “tobacco” preceding “permit issued” near the beginning and substituted “chapter 57, title 39, Idaho Code” for “the Idaho prevention of minors’ access to tobacco act.”

Compiler’s Notes.

The term “this act” near the beginning of subsection (1) refers to S.L. 2012, Chapter 206, which is codified as §§ 39-8420 to 39-8425.

§ 39-8425. Rulemaking. — The attorney general may adopt rules to implement this act. With respect to [section 39-8423\(1\)\(d\), Idaho Code](#), the attorney general shall adopt rules with an effective date that is no earlier than July 1, 2013. In adopting rules implementing subsection 39-8423(1)(d), Idaho Code, the attorney general may provide for an effective date that is later than July 2, 2013, if, in his discretion, such later effective date is warranted.

History.

[I.C., § 39-8425](#), as added by 2012, ch. 206, § 6, p. 548.

Idaho Code Ch. 85

• [Title 39](#)», « [Ch. 85](#) »

Chapter 85
LAKE PEND OREILLE, PEND OREILLE RIVER, PRIEST
LAKE AND PRIEST RIVER COMMISSION

Sec.

39-8501. Creation of Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission.

39-8502. Membership.

39-8503. Duties of the commission.

39-8504. Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission fund established.

§ 39-8501. Creation of Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission. — There is hereby created in the area in and around Bonner county, the Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission.

History.

I.C., § 39-8401, as added by 2003, ch. 231, § 1, p. 590; am. and redesign. 2004, ch. 318, § 7, p. 892.

STATUTORY NOTES

Compiler's Notes.

Chapters 33 and 231 of S.L. 2003 each purported to enact a new chapter 84 in title 39. Accordingly, ch. 33 was codified as title 39, chapter 84 (§§ 39-8401 to 39-8407) and ch. 231 was codified as title 39, chapter 84[85] (§§ 39-8401 [39-8501] to 39-8404 [39-8504]). The chapter enacted by S.L. 2003, ch. 231 was amended and permanently redesignated as title 39, **chapter 85, Idaho Code**, by S.L. 2004, ch. 318.

For more on the Pend Oreille basin commission, see <http://lakescommission.com> Effective Dates.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

§ 39-8502. Membership. — The commission shall consist of seven (7) members as follows: a chairman and four (4) members who may be residents of the county of Bonner and shall be selected by the governor; the regional director of the United States fish and wildlife service; and the attorney general of the state of Idaho or the attorney general's designee. The governor of the state of Montana or the Montana governor's designee shall be an ex officio member of the commission. The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2) and three (3) years by the governor when he makes the appointment. A majority of the commission shall constitute a quorum for the transaction of business. The chairman and the four (4) members appointed by the governor shall be confirmed by the senate. Members shall be compensated as provided in [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 39-8402](#), as added by 2003, ch. 231, § 1, p. 590; am. and redesign. 2004, ch. 318, § 8, p. 892.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Effective Dates.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

§ 39-8503. Duties of the commission. — (1) The Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission shall have:

(a) The duty to study, investigate and select ways and means of controlling the water quality and water quantity as they relate to waters of Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River for the communities' interests and interests of the state of Idaho and for the survival of the native species of fish contiguous to the Pend Oreille Priest Basin. Those species are bull trout, westslope cutthroat, mountain white fish, pike minnow and the forage base for bull trout and kokanee salmon; (b) The authority to study, investigate, develop and select strategies with the department of water resources, the department of environmental quality, the department of fish and game, the department of lands, the United States fish and wildlife service, and the U.S. army corps of engineers for the preservation of the said species of native fish, scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the state; (c) The authority to receive and direct any mitigation moneys into the Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission fund created in [section 39-8504, Idaho Code](#); and (d) The authority to designate one (1) or more representatives to participate in proceedings relating to the Columbia River Basin, including but not limited to those of the Albeni Falls mitigation work group, the technical management team and other proceedings regarding federal Columbia River power system operations, the Columbia River treaty, and the Idaho invasive species council.

(2) Nothing in this section shall be construed to authorize the commission to establish or require minimum stream flows or lake levels, which may only be established under the provisions of chapter 15, title 42, Idaho Code.

History.

[I.C., § 39-8403](#), as added by 2003, ch. 231, § 1, p. 590; am. and redesign. 2004, ch. 318, § 9, p. 892; am. 2018, ch. 63, § 1, p. 154.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 56-1001 et seq.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of water resources, § 42-1701 et seq.

Amendments.

The 2018 amendment, by ch. 63, divided and designated the existing provisions of subsection (1) as paragraphs (a) through (c) and added paragraph (1)(d).

Compiler's Notes.

For more on the Pend Oreille basin commission, see *<http://lakescommission.com>* Effective Dates.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

Section 3 of S.L. 2018, ch. 60 declared an emergency. Approved March 13, 2018.

§ 39-8504. Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission fund established. — There is hereby created in the state treasury the Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River commission fund. Moneys in the fund may consist of appropriations, federal funds, mitigation moneys, donations or moneys of any source. Moneys in the fund may be dispersed for necessary corrective actions to complete the corrective measures as they pertain to duties of the commission created under this chapter. The release of any mitigation funds from the fund shall be authorized by the state board of examiners. Moneys in the fund may also be used to pay the administrative costs of the commission and to provide for participation in proceedings relating to the Columbia River Basin, as authorized under the provisions of [section 39-8503, Idaho Code](#).

History.

[I.C., § 39-8404](#), as added by 2003, ch. 231, § 1, p. 590; am. and redesign. 2004, ch. 318, § 10, p. 892; am. 2018, ch. 63, § 2, p. 154.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2018 amendment, by ch. 63, added “and to provide for participation in proceedings relating to the Columbia River Basin, as authorized under the provisions of [section 39-8503, Idaho Code](#)” at the end of the section.

Effective Dates.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

Section 3 of S.L. 2018, ch. 63 declared an emergency. Approved March 13, 2018.

Chapter 86

IDAHO ELEVATOR SAFETY CODE ACT

Sec.

39-8601. Short title.

39-8602. Legislative findings and intent.

39-8603. Definitions.

39-8604. Enforcement.

39-8605. Administrator's rulemaking authority.

39-8606. Scope — Exemptions.

39-8607. Inspections.

39-8608. Installation permits required — Application — Posting — Exceptions — Other licenses, permits and inspections.

39-8609. Responsibility for operation and maintenance of equipment and for periodic tests.

39-8610. Temporary certificate to operate.

39-8611. Certificate to operate.

39-8612. Operation without certificate may be enjoined.

39-8613. Order to discontinue operation — Notice — Conditions — Contents of order — Rescission of order — Violation — Penalty — Random inspections.

39-8614. Adoption of codes.

39-8615. Inspections and tests.

39-8616. Fees.

39-8617. Annual renewal.

39-8618. Inspection reports and compliance agreements.

39-8619. Violations — Misdemeanors.

39-8620. Civil penalty for violation of chapter — Notice.

39-8621. No limitation or assumption of liability.

39-8622. Accidents — Report and investigation — Cessation of use —
Removal of damaged parts.

39-8623. Idaho elevator safety fund established.

§ 39-8601. Short title. — This chapter shall be known and may be cited as the “Elevator Safety Code Act.”

History.

I.C., § 39-8601, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8602. Legislative findings and intent. — (1) The purpose of this chapter is to provide for safety of life and limb and to ensure that the safe design, mechanical and electrical operation, erection, installation, alteration, maintenance, inspection and repair of elevators, escalators, moving walks, platform lifts, material lifts, and dumbwaiters, and all such operation, erection, installation, alteration, maintenance, inspection and repair subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter. The use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and the protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment and be licensed in accordance with this chapter. Training and experience shall include, but are not limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum acceptable standards for personnel performing all inspections required in this chapter.

(2) This chapter is not intended to prevent the use of systems, methods or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method or device, as prescribed in this chapter and the rules adopted under this chapter.

History.

I.C., § 39-8602, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8603. Definitions. — As used in this chapter, the terms defined in this section shall have the following meanings unless the context clearly indicates another meaning:

(1) “Administrator” means the administrator of the division of building safety for the state of Idaho.

(2) “ANSI” means the American national standards institute.

(3) “ASME” means the American society of mechanical engineers.

(4) “Conveyance” includes elevators, escalators, moving walks, platform lifts, material lifts, and dumbwaiters.

(5) “Division” means the Idaho division of building safety.

(6) “Dumbwaiter” means a hoisting and lowering mechanism equipped with a car of limited size that is used exclusively for carrying materials and that moves in guide rails and serves two (2) or more landings.

(7) “Elevator” means a hoisting or lowering machine equipped with a car or platform that moves in guides and services two (2) or more floors or landings of a building or structure.

(8) “Escalator” means a power-driven, inclined, continuous stairway used for raising and lowering passengers.

(9) “Installation” means a complete conveyance including any hoistway, hoistway enclosures and related construction and all machinery and equipment for its operation.

(a) “Existing installation” means an installation that has been completed or upon which construction was commenced prior to July 1, 2004.

(b) “New installation” means any installation not classified as an existing installation by definition, or an existing conveyance moved to a new location subsequent to July 1, 2004.

(10) “Maintenance” means a process of routine examination, lubrication, cleaning, adjustment, and replacement of parts for the performance in accordance with applicable code requirements.

(11) “Major alteration” means any change to equipment or other maintenance, repair or replacement where work is defined by any applicable code requirement.

(12) “Material lift” means a hoisting and lowering mechanism normally classified as an elevator, equipped with a car that moves within a guide system installed at an angle of greater than seventy degrees (70/d) from the horizontal, serving two (2) or more landings, for the purpose of transporting materials that are manually or automatically loaded or unloaded.

(13) “Modernization” means the replacing or upgrading of any major operating component(s) of a conveyance.

(14) “Moving walks” means a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

(15) “Owner” includes the designated agent or representative of the owner.

(16) “Platform lift” means a hoisting and lowering mechanism that moves within a guide system and serves two (2) or more landings and may include vertical or inclined platform lifts used by persons who are mobility impaired.

(17) “Private residence” means a separate dwelling or a separate apartment in a multiple dwelling occupied only by the members of a single family unit.

(18) “Qualified elevator inspector” or “QEI” means a person who is currently certified by the National Association of Elevator Safety Authorities International (NAESA International) accredited certifying organization as meeting the requirements of the ASME QEI-1 Standard for the Qualification of Elevator Inspectors and who is employed by or under contract to the division of building safety.

(19) “Repair” means the process of rehabilitation, upgrading or replacement of parts that are basically the same as the originals for the purpose of ensuring performance in accordance with the applicable code requirements.

(20) “Replacement” means the substitution of a device or component in its entirety with a new unit that is basically the same as the original for the purpose of ensuring performance in accordance with the applicable code requirements.

History.

I.C., § 39-8603, as added by 2004, ch. 359, § 1, p. 1067; am. 2020, ch. 99, § 1, p. 258.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

The 2020 amendment, by ch. 99, substituted “ASME QEI-1 Standard for the Qualification of Elevator Inspectors” for “NAESA International QEI-1 standard” near the end of subsection (18).

Compiler’s Notes.

For more on the American national standards institute, referred to in subsection (2), see *<http://ansi.org>*.

For more on the American society of mechanical engineers, referred to in subsection (3), see *<http://www.asme.org>*.

For more on NAESA International, referred to in subsection (18), see *<http://naesai.org>*.

For more on ASME QEI-1, Standard for the Qualification of Elevator Inspectors, referred to in subsection (18), see *<https://webstore.ansi.org/Standards/ASME/ASMEQEI2018>*.

§ 39-8604. Enforcement. — The administrator shall enforce the provisions of this chapter. Local governments shall not adopt codes or institute enforcement programs with regard to conveyances.

History.

I.C., § 39-8604, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8605. Administrator's rulemaking authority. — The administrator may adopt rules and codes governing the operation, installation, alteration, maintenance, inspection and repair of conveyances and shall adopt minimum standards governing existing installations. The administrator may adopt such rules and fees as are reasonably necessary to establish and administer the provisions of this chapter.

History.

I.C., § 39-8605, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8606. Scope — Exemptions. — (a) The provisions of this chapter shall apply to all conveyances within the state of Idaho except the following or as provided in subsection (b) of this section:

(1) Conveyances located in private residences; (2) Conveyances in federally owned facilities; (3) Conveyances permanently removed from service or made effectively inoperative; and (4) Conveyances erected temporarily for use only during construction work that are of such a design that they must be operated by a workman stationed at the hoisting machine.

(b) Conveyances erected before July 1, 2004, pursuant to [section 39-8614\(3\), Idaho Code](#), are subject only to the requirements of the safety code for existing elevators and escalators (ASME A17.3). Such conveyances, however, shall also be exempted from any requirements of that ASME A17.3 requiring conveyances to be modified with upgrades or replacements that would fall within the definition of “modernization” as defined in [section 39-8603, Idaho Code](#), or to be modified with additional safety features falling within the definition of “alteration” unless: (1) The total cost of the modification is less than five thousand dollars (\$5,000); or (2) The conveyance is not situated in a privately owned business facility; or (3) The facility in which the conveyance is located is being altered, as defined within the provisions and guidelines applicable to the Americans with disabilities act of 1990 and amendments thereto, provided that said alterations are significant in that they affect the accessibility of the majority of floor space on at least one (1) floor of the building.

History.

[I.C., § 39-8606](#), as added by 2004, ch. 359, § 1, p. 1067; am. 2012, ch. 42, § 1, p. 130.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 42, added the subsection (a) designation to the existing provisions; inserted “or as provided in subsection (b) of this

section” at the end of the introductory paragraph in subsection (a); and added subsection (b).

Effective Dates.

Section 2 of S.L. 2012, ch. 42, declared an emergency. Approved March 6, 2012.

§ 39-8607. Inspections. — On and after July 1, 2004, all installations and periodic inspections required by this chapter shall be performed by a QEI as defined in this chapter.

History.

I.C., § 39-8607, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8608. Installation permits required — Application — Posting — Exceptions — Other licenses, permits and inspections. — (1) On and after July 1, 2004, it shall be unlawful for any person to do, or cause or permit to be done, whether acting as principal, agent or employee, any installation or major alteration of any conveyance in the state of Idaho without first procuring an installation permit from the division of building safety authorizing the work to be done.

(2) The owner of a conveyance shall submit an application for the permit in a form that the division may prescribe. A copy of the plans or specifications for the installation, erection, major alteration, or relocation shall be attached to the permit application.

(3) The permit issued by the division shall be kept posted conspicuously at the site of installation.

(4) No installation permit is required for repairs and replacement normally necessary for maintenance and made with parts of equivalent materials, strength and design, or for installations and major alterations that have been commenced prior to July 1, 2004, or for new installations let for bid prior to November 1, 2002.

(5) The installation permit and inspections required in this chapter are not exclusive. Installations and major alterations of conveyances as herein defined may be subject to licensing, permitting and inspection requirements set forth in other provisions of law.

History.

I.C., § 39-8608, as added by 2004, ch. 359, § 1, p. 1067.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

§ 39-8609. Responsibility for operation and maintenance of equipment and for periodic tests. — (1) The person installing or altering a conveyance is responsible for its operation and maintenance until the division has issued an operating certificate for the conveyance. The owner is responsible for all tests of a new, relocated or altered conveyance until the division has issued an operating permit for the conveyance.

(2) The owner shall be responsible for the safe operation and proper maintenance of the conveyance after the division has issued the operating certificate and also during the period of effectiveness of any temporary operating permit. The owner shall be responsible for assuring that all required periodic tests are performed by a QEI as defined in this chapter.

History.

I.C., § 39-8609, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8610. Temporary certificate to operate. — A temporary certificate to operate may be issued by the administrator. No temporary certificate shall be issued when life-safety nonconformances are present. Before the expiration of the temporary certificate, the conveyance shall be reinspected and a five (5) year certificate to operate shall be issued or the conveyance shall be put out of service.

History.

I.C., § 39-8610, as added by 2004, ch. 359, § 1, p. 1067; am. 2011, ch. 24, § 1, p. 65.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 24, deleted “and shall be effective for not more than sixty (60) days” from the end of the first sentence and substituted “the temporary certificate” for “sixty (60) days” and “five (5) year certificate” for “permanent certificate” in the last sentence.

§ 39-8611. Certificate to operate. — (1) Inspection and certificate. No conveyance shall be placed into operation until an inspection has been performed and a certificate to operate has been issued by the division.

(2) Inspection prior to issuance. A certificate to operate may be issued only if, after a thorough inspection, the QEI finds that the conveyance meets the required safety standards. If the conveyance is found to be unsafe, the division shall prohibit the use of the conveyance until it is made safe. Conveyances shall comply with the codes set forth in [section 39-8614, Idaho Code](#).

(3) Term of certificate. A certificate to operate shall be in effect for five (5) years, provided that the conveyance continues to meet the requirements of the appropriate codes as evidenced by annual inspections.

(4) Revocation of certificate. The certificate to operate shall remain the property of the state of Idaho and may be revoked at any time if the conveyance fails to meet the requirements of the appropriate codes or if the annual certification fee is not paid.

History.

[I.C., § 39-8611](#), as added by 2004, ch. 359, § 1, p. 1067; am. 2007, ch. 137, § 1, p. 397.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 137, added the last sentence in subsection (2).

§ 39-8612. Operation without certificate may be enjoined. —
Whenever any conveyance is being operated without a certificate required by this chapter, the administrator may apply to the district court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the conveyance until the division issues a certificate to operate. Notwithstanding any other provision of law, the division shall not be required to post a bond.

History.

I.C., § 39-8612, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8613. Order to discontinue operation — Notice — Conditions — Contents of order — Rescission of order — Violation — Penalty — Random inspections. — (1) The administrator may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance shall not be operated, in a conspicuous place in the conveyance if the conveyance:

(a) Has not been constructed, installed, maintained or repaired in accordance with the requirements of this chapter; or

(b) Has otherwise become unsafe.

(2) The administrator's order is effective immediately and shall not be stayed by a request for an administrative hearing.

(3) The administrator shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe.

(4) The administrator shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(5) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or that removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty.

(6) The division may conduct random on-site inspections and tests on existing installations and may witness periodic inspections and testing in order to ensure satisfactory performance.

(7) Administrative hearings of appeals from orders issued by the administrator shall be governed by the provisions of the Idaho administrative procedure act, chapter 67 [52], title 52 [67], Idaho Code.

History.

I.C., § 39-8613, as added by 2004, ch. 359, § 1, p. 1067.

STATUTORY NOTES

Cross References.

Penalty for violations of chapter, § 39-8619, 39-8620.

Compiler's Notes.

The bracketed insertions in subsection (7) were added by the compiler to correct the statutory reference.

§ 39-8614. Adoption of codes. — (1) The following codes, including those updates, addenda and amendments thereto hereafter adopted by the division as set forth in the duly promulgated administrative rules, are hereby adopted for all conveyances subject to this chapter as may be applicable:

- (a) ANSI/ASME, A17.1 Safety Code for Elevators and Escalators.
- (b) ANSI/ASME, A17.3 Safety Code for Existing Elevators and Escalators.
- (c) ANSI/ASME, A17.4 Guide for Emergency Personnel.
- (d) ANSI/ASME, A17.5 Elevator and Escalator Electrical Equipment.
- (e) ANSI/ASME, A17.6 Standard for Elevator Suspension, Compensation, and Governor Systems.
- (f) ANSI/ASME, A17.7 Performance-Based Safety Code for Elevators and Escalators.
- (g) ANSI/ASME, A17.8 Standard for Wind Turbine Tower Elevators.
- (h) ICC/ANSI, A117.1 Accessible and Usable Buildings and Facilities.
- (i) ANSI/ASME, A18.1 Safety Standard for Platform Lifts and Chairlifts.
- (j) ASME, QEI-1 Standard for the Qualification of Elevator Inspectors.

(2) Conveyances placed into operation after July 1, 2004, shall comply with those codes in effect on the date the division received the application for the permit or certificate for the conveyance.

(3) Conveyances placed into operation prior to July 1, 2004, shall be required to comply only with the Safety Code for Existing Elevators and Escalators.

History.

I.C., § 39-8614, as added by 2004, ch. 359, § 1, p. 1067; am. 2007, ch. 137, § 2, p. 397; am. 2020, ch. 99, § 2, p. 258.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 137, designated the formerly undesignated introductory language as subsection (1), inserted “and amendments thereto hereafter adopted by the division” and “as may be applicable below” therein, and made related redesignations; and added subsections (2) and (3).

The 2020 amendment, by ch. 99, rewrote subsection (1) to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

For more on the American national standards institute (ANSI), see *<http://ansi.org>*.

For more on the American society of mechanical engineers (ASME), see *<http://www.asme.org>*.

§ 39-8615. Inspections and tests. — Conveyances shall have an inspection performed in accordance with ANSI/ASME standards set forth in [section 39-8614, Idaho Code](#). The following types of inspections are required:

(1) Acceptance. The initial inspection and tests of new or altered equipment by a QEI to check for compliance with the applicable code requirements.

(2) Periodic. Periodic inspection and tests plus additional detailed examination and operation of equipment at specified intervals performed by a QEI to check for compliance with the applicable code requirements. Periodic inspections are required at least every five (5) years.

(3) Routine. Annual examinations performed in compliance with applicable codes to verify compliance with requirements.

History.

[I.C., § 39-8615](#), as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8616. Fees. — The division shall have authority to charge certain fees in accordance with the fee schedule established by the division, which schedule shall not exceed the amounts set forth as follows and which amounts may be reduced by the division as set forth in duly promulgated administrative rules:

(1) Installation, alteration, modernization or relocation fee schedule. Fees include one (1) plan review and certificate to operate, and two (2) acceptance inspections (each inspection thereafter will incur a reinspection fee): (a) Certification fee:

- (i) Traction and roped hydraulic elevator \$1,500
- (ii) Moving walk/escalator \$1,500
- (iii) Hydraulic elevator \$1,000
- (iv) Platform lift/material lift/dumbwaiter \$750

(b) Reinspection fee:

- (i) Traction and roped hydraulic elevator \$500
- (ii) Moving walk/escalator \$500
- (iii) Hydraulic elevator \$500
- (iv) Platform lift/material lift/dumbwaiter \$250

(2) Annual certificate to operate fee schedule. Fees include annual certificate to operate and periodic inspection (every five (5) years), and one (1) reinspection as may be necessary (each inspection thereafter will incur a reinspection fee): (a) Certification fee:

- (i) Traction and roped hydraulic elevator \$225
- (ii) Moving walk/escalator \$225
- (iii) Hydraulic elevator \$125
- (iv) Platform lift/material lift/dumbwaiter \$100

(b) Reinspection fee:

- (i) Traction and roped hydraulic elevator \$225
 - (ii) Moving walk/escalator \$225
 - (iii) Hydraulic elevator \$125
 - (iv) Platform lift/material lift/dumbwaiter \$100
- (3) Temporary certificate to operate fee schedule (same as annual) and one (1) reinspection fee as may be necessary (each inspection thereafter will incur a reinspection fee): (a) Temporary certification fee: (i) Traction and roped hydraulic elevator \$225
- (ii) Moving walk/escalator \$225
 - (iii) Hydraulic elevator \$125
 - (iv) Platform lift/material lift/dumbwaiter \$100
- (b) Reinspection fee:
- (i) Traction and roped hydraulic elevator \$225
 - (ii) Moving walk/escalator \$225
 - (iii) Hydraulic elevator \$125
 - (iv) Platform lift/material lift/dumbwaiter \$100
- (4) Application for initial certification (nonrefundable): All conveyances \$50

History.

I.C., § 39-8616, as added by 2004, ch. 359, § 1, p. 1067; am. 2007, ch. 137, § 3, p. 397.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 137, rewrote the introductory language, which formerly read: “Fees to be charged by the division shall be as follows”; and in the introductory language in subsections (2) and (3), added “and (1) reinspection fee as may be necessary (each inspection thereafter will incur a reinspection fee)” or similar language.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 39-8617. Annual renewal. — Certificates to operate shall be renewed annually by making application to the division on such forms as the division may prescribe. Successful application shall require payment of the annual renewal fee and submission of a satisfactory routine inspection form, provided however, that on each five (5) year anniversary of issuance of the certificate, successful application shall require payment of the annual renewal fee and submission of a satisfactory periodic inspection form.

History.

I.C., § 39-8617, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8618. Inspection reports and compliance agreements. — (1) Within fifteen (15) days of completion of the inspection, all inspection reports shall be filed with the division and a copy shall be sent to the owner for corrective actions as required.

(2) Within thirty (30) days of the delivery of an inspection report to the owner and the division, the owner and the division shall enter into a compliance agreement whereby the owner and the division shall agree upon a schedule for corrective actions identified in the inspection report. The division shall issue a temporary certificate to operate if the corrective actions are not related to life safety issues. The owner and the division shall thereafter act in good faith to comply with the provisions of the compliance agreement.

(3) Where there are practical difficulties involved in complying with this chapter or any provision of any applicable code, as part of a compliance agreement, the owner and the division may identify alternative means of compliance so long as such alternative means do not lessen health, fire and life safety requirements and are otherwise consistent with the intent and purpose of applicable codes.

(4) An owner's failure to complete the corrective actions set forth in the compliance agreement shall constitute grounds for the imposition of civil penalties and such further action as the division may deem appropriate if the owner:

(a) Fails to initiate corrective action; and

(b) Fails to provide evidence of compliance within thirty (30) days of the owner's receipt of written notice from the division of a failure to comply.

(5) An owner shall not be deemed to be in violation of this chapter:

(a) If the owner and the division are in the process of entering into a compliance agreement; or

(b) If the owner is undertaking corrective action as set forth in the compliance agreement; or

(c) If upon the expiration of thirty (30) days from receipt of written notice from the division specifying the particulars in which the owner has failed to perform its obligations under a compliance agreement, the owner fails, prior to expiration of said thirty (30) day period, to rectify the particulars specified in such notice; or

(d) If an owner's failure to perform under this chapter cannot be reasonably rectified within thirty (30) days from receipt of written notice from the division, but the owner, having received the notice, has commenced actions necessary to cure the failure and is diligently pursuing the cure of the failure.

History.

I.C., § 39-8618, as added by 2004, ch. 359, § 1, p. 1067; am. 2007, ch. 137, § 4, p. 397.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 137, added the subsection (1) and (4) designations and added subsections (2), (3), and (5); and in subsection (4), in the introductory language, added "An owner's" and "if the owner," and substituted "complete the corrective actions set forth in the compliance agreement" for "complete corrective actions within fifteen (15) days of receipt of the inspection report," and added paragraphs (4)(a) and (4)(b).

§ 39-8619. Violations — Misdemeanors. — (1) Any person who willfully violates any provision of this chapter or the duly promulgated rules hereunder is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(2) A separate violation is deemed to have occurred with respect to each conveyance not in compliance with this chapter. Each day such violation continues constitutes a separate offense.

History.

I.C., § 39-8619, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8620. Civil penalty for violation of chapter — Notice. — (1) The administrator may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars (\$500) per violation. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The administrator shall notify the violator of his action and the reasons for his action in writing. The administrator shall send the notice by certified mail to the violator's last known address. The notice shall inform the violator that a hearing may be requested under the provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. A request for a hearing shall not stay the effect of the penalty.

History.

I.C., § 39-8620, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8621. No limitation or assumption of liability. — This chapter shall not be construed to relieve or lessen the responsibility of any person, firm or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing or repairing any conveyance covered by this chapter for damages to any person or property caused by any defect therein, nor does the state assume any such liability or responsibility for any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder.

History.

I.C., § 39-8621, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8622. Accidents — Report and investigation — Cessation of use — Removal of damaged parts. — The owner shall promptly notify the division of each accident to a person requiring the service of a physician or resulting in a disability exceeding one (1) day and shall afford the division every facility for investigating and inspecting the accident. After being so notified, the division shall without delay make an inspection and shall place on file a full and complete report of the accident. The report shall detail all material facts and information gathered as a part of the investigation and shall include the potential cause or causes of the accident, as may be ascertained by the division. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe, it has been reinspected, any repairs, changes or alterations have been approved by the division, and a permit has been issued by the division. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the division grants permission to do so.

History.

I.C., § 39-8622, as added by 2004, ch. 359, § 1, p. 1067.

§ 39-8623. Idaho elevator safety fund established. — All moneys received by the administrator under the provisions of this chapter shall be paid into the state treasury as directed by [section 59-1014, Idaho Code](#), and shall be placed by the state treasurer to the credit of a dedicated fund to be known as the “Idaho Elevator Safety Fund” which is hereby established. All such moneys hereafter placed in the fund are hereby set aside and appropriated to the division of building safety to carry into effect the provisions of this chapter.

History.

[I.C., § 39-8623](#), as added by 2006, ch. 81, § 1, p. 243.

Chapter 87
IDAHO COMMONSENSE CONSUMPTION ACT

Sec.

39-8701. Short title.

39-8702. Prevention of frivolous lawsuits.

39-8703. Exemption.

39-8704. Definitions.

39-8705. Pleading requirements.

39-8706. Stay pending motion to dismiss.

§ 39-8701. Short title. — This chapter shall be known and may be cited as the “Idaho Commonsense Consumption Act.”

History.

I.C., § 39-8701, as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler’s Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act [July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

§ 39-8702. Prevention of frivolous lawsuits. — Except as provided in [section 39-8703, Idaho Code](#), a manufacturer, packer, distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in [section 39-8704, Idaho Code](#), or an association of one (1) or more of such entities, shall not be subject to civil liability arising under any Idaho law for any claim, as defined in [section 39-8704, Idaho Code](#), arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food.

History.

[I.C., § 39-8702](#), as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act [July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

§ 39-8703. Exemption. — Notwithstanding [section 39-8702, Idaho Code](#), civil liability shall not be precluded where the claim of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding provision set forth by statute, rule or regulation in Idaho or the United States provided the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to manufacturing, marketing, distribution, advertising, labeling or the sale of food, provided such violation is knowing and willful, as defined in [section 39-8704, Idaho Code](#), and provided further that the claimed injury was proximately caused by such violation.

History.

[I.C., § 39-8703](#), as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act [July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

§ 39-8704. Definitions. — As used in this chapter:

(1) “Claim” means any claim by or on behalf of a natural person as well as any derivative or other claim arising therefrom asserted by or on behalf of any other person.

(2) “Food” means:

(a) Articles used for food or drink for persons or other animals; (b) Chewing gum; and (c) Articles used for components of any other such article.

(3) “Generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption” means an obesity-related condition generally known to result or to likely result from the cumulative effect of consumption and not from a single instance of consumption.

(4) “Knowing and willful violation” means: (a) The conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and (b) The conduct constituting the violation was not required by any law, regulation, order or rule of the United States, the state of Idaho, or any political subdivision thereof.

(5) “Person” means any individual, partnership, corporation, firm, association, governmental subdivision or agency, public or private organization or other legal entity.

History.

I.C., § 39-8704, as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler’s Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act

[July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

§ 39-8705. Pleading requirements. — (1) In any action exempted pursuant to [section 39-8703\(1\), Idaho Code](#), the complaint initiating such action shall state with particularity the following:

- (a) The statute, rule, regulation or other law of Idaho or the United States that was allegedly violated;
- (b) The facts that are alleged to constitute a material violation of such law; and
- (c) The facts that are alleged to demonstrate that such violation proximately caused actual injury to the plaintiff.

(2) In any action exempted pursuant to [section 39-8703\(2\), Idaho Code](#), the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was done with the intent to deceive or injure consumers or with actual knowledge that such violation was injurious to consumers.

History.

[I.C., § 39-8705](#), as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act [July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

§ 39-8706. Stay pending motion to dismiss. — In any action exempted pursuant to [section 39-8703, Idaho Code](#), all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of any stay of discovery, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party.

History.

[I.C., § 39-8706](#), as added by 2004, ch. 380, § 1, p. 1140.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2004, ch. 380, provided: “The provisions of this act shall apply to all covered claims pending on the effective date of this act [July 1, 2004] and to all claims filed thereafter, regardless of when the claim arose.”

Chapter 88

IDAHO UNDERGROUND STORAGE TANK ACT

Sec.

39-8801. Short title.

39-8802. Legislative findings and intent.

39-8803. Definitions.

39-8804. Program scope.

39-8805. Rules governing underground storage tank systems.

39-8805A. Compliance date for certain rules.

39-8806. Additional measures to protect ground water.

39-8807. Operator training.

39-8808. Inspections.

39-8809. Delivery prohibition.

39-8810. Underground storage tank database.

39-8811. Enforcement.

39-8812. Severability.

39-8813. Idaho underground storage tank program fund.

§ 39-8801. Short title. — This act may be known and cited as the “Idaho Underground Storage Tank Act.”

History.

I.C., § 39-8801, as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2007, ch. 29, which is codified as §§ 39-8801 to 39-8812.

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8802. Legislative findings and intent. — (1) The legislature of the state of Idaho finds:

(a) That the protection of the environment from leaking underground storage tanks is a matter of statewide concern; (b) That subchapter IX of the solid waste disposal act (42 U.S.C. 6991, et seq. (2000)), as amended by the underground storage tank compliance act, public law 109-58, title XV, August 8, 2005, and regulations adopted pursuant thereto, establish federal law regulating underground storage tanks; and (c) That 42 U.S.C. 6991c(a) and 40 CFR part 281 allow the administrator of the United States environmental protection agency to approve a state program.

(2) Therefore, it is the intent of the legislature:

(a) To establish a state underground storage tank program to comply with the requirements of the underground storage tank compliance act, public law 109-58, title XV, August 8, 2005, and the regulations adopted pursuant thereto, and 40 CFR part 280, so that the Idaho department of environmental quality may promulgate rules, through negotiated rulemaking, to implement a state underground storage tank program as provided in section 39-8805, Idaho Code; (b) That such program not constitute a new corrective action program; (c) That such program qualify the state for federal funding from the federal leaking underground storage tank trust fund; (d) That such program may be funded as provided in section 39-119, Idaho Code, not to exceed one hundred dollars (\$100) per tank per year. These funds shall only be used for the underground storage tank program; (e) A fee balance greater than thirty-five thousand dollars (\$35,000) as of December 31 of each year, excluding any early payments for the fees due January 2 of the following year, shall be used to reduce the following year's fee; and (f) Prior to February 1 of each year, the director shall report to the governor and the legislature on the use of fees collected the previous year. At a minimum, the report shall include: (i) A list of all tanks subject to inspection;

(ii) The type of inspection and regulatory authority or guidance used; and (iii) A detailed accounting of how fee funds were spent.

History.

I.C., § 39-8802, as added by 2007, ch. 29, § 1, p. 57; am. 2016, ch. 52, § 1, p. 148.

STATUTORY NOTES**Amendments.**

The 2016 amendment, by ch. 52, rewrote paragraph (2)(d), which formerly read: “That such program not be funded by user fees or other fees for service such as that provided in [section 39-119, Idaho Code](#)”; and added paragraphs (2)(e) and (2)(f).

Federal References.

The federal leaking underground storage tank trust fund, referred to at the end of paragraph (2)(c), is established at [26 USCS § 9508](#).

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8803. Definitions. — As used in this chapter:

- (1) “Board” means the Idaho board of environmental quality.
- (2) “Board of trustees” means the board of trustees established in [section 41-4904, Idaho Code](#).
- (3) “Department” means the Idaho department of environmental quality.
- (4) “Director” means the director of the Idaho department of environmental quality.
- (5) “Underground storage tank system” means underground storage tank as defined by [42 U.S.C. 6991\(10\)](#).

History.

[I.C., § 39-8803](#), as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Cross References.

Board of environmental quality, § 39-107.

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8804. Program scope. — The requirements of this chapter and rules promulgated pursuant to this chapter, shall apply to underground storage tank systems in the state of Idaho, owners and operators of underground storage tank systems in the state of Idaho, persons who install or inspect installations of underground storage tank systems in the state of Idaho, persons who manufacture any regulated component of an underground storage tank system installed in the state of Idaho, and persons who deliver fuel to a regulated underground storage tank system in the state of Idaho.

History.

I.C., § 39-8804, as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8805. Rules governing underground storage tank systems. — (1) Pursuant to the procedures established by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the department shall promulgate through negotiated rulemaking, and the board shall adopt, rules as are necessary to regulate underground storage tank systems within the state. This includes, but is not limited to, rules addressing:

(a) Inspection and certification of underground storage tanks; (b) Operator training;

(c) Release prevention, compliance and enforcement; (d) Delivery prohibitions; and (e) Additional measures to protect ground water.

(2) The board of trustees shall participate in any such negotiated rulemaking through designated representatives.

(3) The rules, promulgated and adopted pursuant to this chapter, and guidance or policy provisions developed in regard to rules promulgated and adopted pursuant to this chapter, shall not be broader in scope, more stringent than, or propose to regulate an activity not regulated by federal law or regulations governing underground storage tanks except as provided by [section 39-107D, Idaho Code](#).

(4) To the degree that any rule promulgated and adopted pursuant to this chapter, or guidance or policy developed in regard to any rule promulgated and adopted pursuant to this chapter, is based upon science, the department shall use: (a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

History.

[I.C., § 39-8805](#), as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8805A. Compliance date for certain rules. — (1) Compliance with the additional testing and inspection requirements set forth in **40 CFR 280.10** concerning emergency power generators, **40 CFR 280.35** concerning spill prevention equipment and containment sumps used for interstitial monitoring of piping and overfill prevention equipment, and **40 CFR 280.40** concerning release detection, as adopted by Idaho and incorporated by reference in **IDAPA 58.01.07.004**, shall be required only on and after October 13, 2021, notwithstanding any prior date set forth in said regulations or rule.

(2) The provisions of subsection (1) of this section shall be retroactive to the effective date of **IDAPA 58.01.07.004**, to wit March 24, 2017.

History.

I.C., § 39-8805A, as added by 2019, ch. 34, § 1, p. 96.

§ 39-8806. Additional measures to protect ground water. — New and replacement underground storage tank systems and connected piping installed after the effective date of this chapter and located within one thousand (1,000) feet of any existing community water system or any existing potable drinking water well, shall comply with the secondary containment requirements of 42 U.S.C. 6991b(i)(1).

History.

I.C., § 39-8806, as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Compiler's Notes.

The phrase “effective date of this chapter” refers to the effective date of S.L. 2007, Ch. 29, which was February 23, 2007.

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8807. Operator training. — (1) The department shall adopt an operator training program to be conducted by either the department or a state of Idaho approved third party to help underground storage tank system owners and operators and their employees understand and comply with the requirements of this chapter and rules promulgated pursuant to this chapter. The training shall be consistent with [42 U.S.C. 6991i\(a\)](#).

(2) Training conducted by the department shall be offered on location to owners, operators and employees of underground storage tank systems regulated under this chapter. The training shall be specific to the equipment on location.

History.

[I.C., § 39-8807](#), as added by 2007, ch. 29, § 1, p. 57; am. 2016, ch. 52, § 2, p. 148.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 52, deleted “at no cost” following “offered” in the first sentence of subsection (2).

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8808. Inspections. — (1) Underground storage tank systems regulated under this chapter which have not been inspected by the department or the United States environmental protection agency since December 22, 1998, shall be inspected by the department in compliance with this chapter.

(2) After completion of all inspections required under subsection (1) of this section, the department or a third party inspector certified by an approved state or national program, shall conduct on-site inspections of underground storage tank systems regulated under this chapter at least once every three (3) years to determine compliance with this chapter.

(3) If the department conducts the inspection, it shall not charge an additional fee for the inspection.

History.

I.C., § 39-8808, as added by 2007, ch. 29, § 1, p. 57; am. 2016, ch. 52, § 3, p. 148.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 52, substituted “an additional fee” for “a fee” in subsection (3).

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8809. Delivery prohibition. — (1) Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated substance into an underground storage tank regulated under this chapter at a facility which has been identified by the department to be ineligible for such delivery, deposit, or acceptance.

(2) The department shall promulgate through negotiated rulemaking, and the board shall adopt, rules governing delivery prohibition as provided in [section 39-8805, Idaho Code](#).

History.

[I.C., § 39-8809](#), as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8810. Underground storage tank database. — The department shall develop and use a database, which shall be available to the public on the internet, detailing the status of all underground storage tanks in the state of Idaho which are subject to regulation, including whether they are subject to delivery prohibition. The department shall develop the database within one (1) year of the effective date of this chapter. Such database shall be accurate, updated no less than quarterly, and subject to public review and correction by petition to the department.

History.

I.C., § 39-8810, as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Compiler's Notes.

The phrase “effective date of this chapter” refers to the effective date of S.L. 2007, Ch. 29, which was February 23, 2007.

For more on the underground storage tank database, see <http://www.deq.idaho.gov/waste/progissues/ustlust/index.cfm>.

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8811. Enforcement. — Failure to comply with this chapter or rules promulgated pursuant to this chapter shall be subject to enforcement pursuant to the enforcement provisions of the Idaho environmental protection and health act contained in [section 39-108, Idaho Code](#), provided however, that any monetary penalties for violations of the provisions of this chapter, or rules promulgated pursuant to this chapter, shall be assessed against the violator, or the violator shall be sued to recover in court, as follows:

(1) Anyone subject to the provisions of this chapter as provided in [section 39-8804, Idaho Code](#), or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with tank notification requirements, or to have submitted false information pursuant to tank notification requirements, as provided in this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, shall be liable for penalties of up to five thousand dollars (\$5,000) per violation.

(2) Anyone subject to the provisions of this chapter as provided in [section 39-8804, Idaho Code](#), or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with any provisions of this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, for existing or new tank systems, shall be liable for penalties of up to five thousand dollars (\$5,000) for each tank for each day of violation. If the violation is continuous, the violator shall be liable for penalties of up to five thousand dollars (\$5,000) for each day of violation.

History.

[I.C., § 39-8811](#), as added by 2007, ch. 29, § 1, p. 57; am. 2011, ch. 41, § 1, p. 96.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 41, added “provided, however, that any monetary penalties for violations of the provisions of this chapter, or rules promulgated pursuant to this chapter, shall be assessed against the violator, or the violator shall be sued to recover in court, as follows” at the end of the introductory paragraph and added subsections (1) and (2).

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

Section 2 of S.L. 2011, ch. 41 declared an emergency. Approved March 8, 2011.

§ 39-8812. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

History.

I.C., § 39-8812, as added by 2007, ch. 29, § 1, p. 57.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2007, ch. 29 declared an emergency. Approved February 23, 2007.

§ 39-8813. Idaho underground storage tank program fund. — (1) All moneys received from fees collected from all regulated underground storage tanks shall be forwarded to the department and shall be paid into the Idaho underground storage tank program fund, which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho underground storage tank program fund and shall be expended for compliance, training, technical, legal and administrative support necessary for implementing the program required under the Idaho underground storage tank act as provided in this chapter.

(3) Costs and expenses incurred by the department in performing the duties, and the exercise of its powers in carrying out the underground storage tank program, shall be paid out of the fund.

(4) Idle moneys in the Idaho underground storage tank program fund established in this section shall be invested by the state treasurer as provided in [section 67-1210, Idaho Code](#). Interest earned on all such investments shall be paid into the fund. Moneys in the fund may be expended pursuant to appropriation.

History.

[I.C., § 39-8813](#), as added by 2017, ch. 40, § 1, p. 62.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Chapter 89

REDUCED CIGARETTE IGNITION PROPENSITY

Sec.

39-8901. Short title. [Contingent repeal — See § 39-8911.]

39-8902. Definitions. [Contingent repeal — See § 39-8911.]

39-8903. Test method and performance standard. [Contingent repeal — See § 39-8911.]

39-8904. Certification and product change. [Contingent repeal — See § 39-8911.]

39-8905. Marking of cigarette packaging. [Contingent repeal — See § 39-8911.]

39-8906. Penalties. [Contingent repeal — See § 39-8911.]

39-8907. Implementation. [Contingent repeal — See § 39-8911.]

39-8908. Inspection. [Contingent repeal — See § 39-8911.]

39-8909. Reduced cigarette ignition propensity and firefighter protection act fund. [Contingent repeal — See § 39-8911.]

39-8910. Sale outside of Idaho. [Contingent repeal — See § 39-8911.]

39-8911. Preemption. [Contingent repeal — See § 39-8911.]

§ 39-8901. Short title. [Contingent repeal — See § 39-8911.] — This act may be known and cited as the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act.”

History.

I.C., § 39-8901, as added by 2008, ch. 278, § 1, p. 792.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2008, ch. 278, which is codified as §§ 39-8901 to 39-8911.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8902. Definitions. [Contingent repeal — See § 39-8911.] — As used in this chapter:

(1) “Agent” means any person authorized by the state tax commission to purchase and affix stamps on packages of cigarettes.

(2) “Cigarette” means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than tobacco.

(3) “Manufacturer” means:

(a) Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in paragraph (a) or (b) of this subsection.

(4) “Quality control and quality assurance program” means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program ensures that the testing repeatability remains within the required repeatability values stated in [section 39-8903\(1\)\(f\), Idaho Code](#), for all test trials used to certify cigarettes in accordance with this chapter.

(5) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.

(6) “Retail dealer” means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) “Sale” means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(8) “Wholesale dealer” means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one (1) or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

History.

I.C., § 39-8902, as added by 2008, ch. 278, § 1, p. 792.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101 et seq.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8903. Test method and performance standard. [Contingent repeal — See § 39-8911.] — (1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with [section 39-8904, Idaho Code](#), and the cigarettes have been marked in accordance with [section 39-8905, Idaho Code](#).

(a) Testing of cigarettes shall be conducted in accordance with the American society of testing and materials (ASTM) standard E2187-04, “standard test method for measuring the ignition strength of cigarettes.”

(b) Testing shall be conducted on ten (10) layers of filter paper.

(c) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required in this section shall only be applied to a complete test trial.

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization (ISO), or other comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette’s compliance with the performance standard required in this

section shall be conducted in accordance with this section.

(2) Each cigarette listed in a certification submitted pursuant to [section 39-8904, Idaho Code](#), that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in paragraph (1)(a) of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (1)(c) of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to [section 39-8904, Idaho Code](#). If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years,

and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

(5) The state fire marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM standard E2187-04 and the performance standard in subsection (1)(c) of this section.

(6) The state fire marshal shall review the effectiveness of this section and report the state fire marshal's findings every three (3) years to the legislature and, if appropriate, make recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three (3) year period.

(7) The requirements of subsection (1) of this section shall not prohibit:

(a) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this chapter if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retail dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(b) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of those cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

(8) This chapter shall be implemented in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

History.

I.C., § 39-8903, as added by 2008, ch. 278, § 1, p. 793.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

State fire marshal, §§ 41-254, 41-255.

Compiler's Notes.

For more on ASTM E2187-09, see <http://www.astm.org/Standards/E2187.htm>.

For more on ISO/IEC 17025, see <http://www.isoiec17025.com/wstpage4.html>.

The phrase “the effective date of this chapter” in paragraph (7)(a) refers to the effective date of S.L. 2008, ch. 278, which was April 1, 2009.

For more on the New York fire safety standards for cigarettes, see <http://firesafe-cigarettes.org/assets/files/Harvardstudy.pdf>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8904. Certification and product change. [Contingent repeal — See § 39-8911.] — (1) Each manufacturer shall submit to the state fire marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with [section 39-8903, Idaho Code](#); and (b) Each cigarette listed in the certification meets the performance standard set forth in [section 39-8903, Idaho Code](#).

(2) Each cigarette listed in the certification shall be described with the following information: (a) Brand, or trade name on the package; (b) Style, such as light or ultra light; (c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable; (f) Filter or nonfilter;

(g) Package description, such as soft pack or box; (h) Marking pursuant to [section 39-8905, Idaho Code](#); (i) The name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and (j) The date that the testing occurred.

(3) The certifications shall be made available to the attorney general for purposes consistent with this chapter and the state tax commission for purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every three (3) years.

(5) For each brand family listed in a certification, a manufacturer shall pay to the state fire marshal a one thousand dollar (\$1000) fee. The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three (3) year certification period.

(6) All moneys collected as certification fees submitted by manufacturers shall be deposited in the state treasury to the credit of a special account in the state operating fund hereby created to be known as the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement

Fund.” The fund shall, in addition to any other moneys made available for that purpose, be available to the state fire marshal solely to support processing, testing, enforcement and oversight activities under this chapter.

(7) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required in this chapter, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in [section 39-8903, Idaho Code](#), and maintains records of that retesting as required by [section 39-8903, Idaho Code](#). Any altered cigarette which does not meet the performance standard set forth in [section 39-8903, Idaho Code](#), may not be sold in this state.

History.

[I.C., § 39-8904](#), as added by 2008, ch. 278, § 1, p. 795.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

State fire marshal, §§ 41-254, 41-255.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101 et seq.](#)

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8905. Marking of cigarette packaging. [Contingent repeal — See § 39-8911.] — (1) Cigarettes that are certified by a manufacturer in accordance with [section 39-8904, Idaho Code](#), shall be marked to indicate compliance with the requirements of [section 39-8903, Idaho Code](#). The marking shall be in eight (8) point type or larger and consist of:

(a) Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

(b) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or

(c) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this chapter.

(2) A manufacturer shall use only one (1) marking, and shall apply this marking uniformly for all packages including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer.

(3) The state fire marshal shall be notified as to the marking that is selected.

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve:

(a) Any marking in use and approved for sale in another state; or

(b) The letters “FSC,” which signify fire standards compliant, appearing in eight (8) point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

Proposed markings shall be deemed approved if the state fire marshal fails to act within ten (10) business days of receiving a request for approval.

(5) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with [section 39-8904, Idaho Code](#), shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the state fire marshal, the state tax commission, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

History.

[I.C., § 39-8905](#), as added by 2008, ch. 278, § 1, p. 796.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

State fire marshal, §§ 41-254, 41-255.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#) et seq.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8906. Penalties. [Contingent repeal — See § 39-8911.] — (1) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of [section 39-8903, Idaho Code](#), shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale; provided however, that in no case shall the penalty against that person or entity exceed one hundred thousand dollars (\$100,000) during any thirty (30) day period.

(2) A retail dealer who knowingly sells or offers to sell cigarettes in violation of [section 39-8903, Idaho Code](#), shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale; provided however, that in no case shall the penalty against that retail dealer exceed twenty-five thousand dollars (\$25,000) during any thirty (30) day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to [section 39-8904, Idaho Code](#), shall be subject to a civil penalty of at least seventy-five thousand dollars (\$75,000) and not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

(4) Any person violating any other provision in this chapter shall be subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by [section 39-8903, Idaho Code](#), shall be subject to forfeiture. Cigarettes forfeited pursuant to this subsection shall be destroyed; provided however, that prior to the destruction of any cigarettes forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(6) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this chapter or of rules adopted under this chapter constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

(7) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal shall discover any cigarettes that have not been marked in the manner required in [section 39-8905, Idaho Code](#), the personnel is hereby authorized and empowered to seize and take possession of the cigarettes. The cigarettes shall be turned over to the state tax commission, and shall be forfeited to the state. Cigarettes seized pursuant to this subsection shall be destroyed; provided however, that prior to the destruction of any cigarettes seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

History.

[I.C., § 39-8906](#), as added by 2008, ch. 278, § 1, p. 797.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

State fire marshal, §§ 41-254, 41-255.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#) et seq.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8907. Implementation. [Contingent repeal — See § 39-8911.] —

(1) The state fire marshal may promulgate rules pursuant to the provisions of chapter 52, title 67, Idaho Code, the administrative procedure act, necessary to effectuate the purposes of this chapter.

(2) The state tax commission in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under chapter 25, title 63, Idaho Code, may inspect the cigarettes to determine if the cigarettes are marked as required in [section 39-8905, Idaho Code](#). If the cigarettes are not marked as required, the state tax commission shall notify the state fire marshal.

History.

[I.C., § 39-8907](#), as added by 2008, ch. 278, § 1, p. 798.

STATUTORY NOTES

Cross References.

State fire marshal, §§ 41-254, 41-255.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101 et seq.](#)

Compiler's Notes.

Section 2 of S.L. 2008, ch. 278 provided: “Local Regulation. Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in this chapter or by exclusion of that subject from this chapter.”

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8908. Inspection. [Contingent repeal — See § 39-8911.] — To enforce the provisions of this chapter, the attorney general, the state tax commission and the state fire marshal, their duly authorized representatives and other law enforcement personnel are hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, is hereby directed and required to give the attorney general, the state tax commission and the state fire marshal, their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized in this section.

History.

I.C., § 39-8908, as added by 2008, ch. 278, § 1, p. 798.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

State fire marshal, §§ 41-254, 41-255.

State tax commission, Idaho **Const., Art. VII, § 12** and **§ 63-101** et seq.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8909. Reduced cigarette ignition propensity and firefighter protection act fund. [Contingent repeal — See § 39-8911.] — All moneys collected as civil penalties under [section 39-8906, Idaho Code](#), shall be deposited in the state treasury to the credit of a special account in the state operating fund hereby created to be known as the “Reduced Cigarette Ignition Propensity and Firefighter Protection Act Fund.” The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for that purpose, be made available to the state fire marshal to support fire safety and prevention programs.

History.

[I.C., § 39-8909](#), as added by 2008, ch. 278, § 1, p. 798.

STATUTORY NOTES

Cross References.

State fire marshal, §§ 41-254, 41-255.

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8910. Sale outside of Idaho. [Contingent repeal — See § 39-8911.] — Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of **section 39-8903, Idaho Code**, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.

History.

I.C., § 39-8910, as added by 2008, ch. 278, § 1, p. 798.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

§ 39-8911. Preemption. [Contingent repeal — See § 39-8911.] — This chapter shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective.

History.

I.C., § 39-8911, as added by 2008, ch. 278, § 1, p. 798.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2008, ch. 278 provided: “Local Regulation. Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in this chapter or by exclusion of that subject from this chapter.”

Effective Dates.

Section 3 of S.L. 2008, ch. 278 provided that Section 1 of the act, enacting chapter 89, title 39, Idaho Code, should take effect on and after the first day of the thirteenth month after passage and approval [April 1, 2009].

Chapter 90
IDAHO HEALTH FREEDOM ACT

Sec.

39-9001. Short title.

39-9002. Definitions.

39-9003. Statement of public policy.

39-9004. Enforcement.

§ 39-9001. Short title. — This chapter shall be known and may be cited as the “Idaho Health Freedom Act.”

History.

I.C., § 39-9001, as added by 2010, ch. 46, § 1, p. 84.

RESEARCH REFERENCES

Idaho Law Review. — Sound and Fury, Signifying Nothing: Nullification and the Question of Gubernatorial Executive Power in Idaho, Comment. 49 Idaho L. Rev. 659 (2013).

§ 39-9002. Definitions. — (1) “Health care services” shall mean any service, treatment, or provision of product for the care of physical or mental disease, illness, injury, defect or condition, or to otherwise maintain or improve physical or mental health, subject to all laws and rules regulating health service providers and products within the state of Idaho.

(2) “Mode of securing” shall mean to purchase directly or on credit or by trade, or to contract for third-party payment by insurance or other legal means authorized by the state of Idaho, or to apply for or accept employer or government sponsored health care benefits under such conditions as may legally be required as a condition of such benefits, or any combination of the same.

(3) “Penalty” shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence, established by law or rule of the federal government of the United States of America or its subdivision or agency, that is used to punish or discourage the exercise of rights protected under this chapter.

History.

I.C., § 39-9002, as added by 2010, ch. 46, § 1, p. 84.

§ 39-9003. Statement of public policy. — (1) The power to require or regulate a person's choice in the mode of securing health care services, or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the **Ninth Amendment**, and to the several states pursuant to the **Tenth Amendment**. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services free from the imposition of penalties, or the threat thereof, by the federal government of the United States of America relating thereto.

(2) It is hereby declared that the public policy of the state of Idaho, consistent with our constitutionally recognized and inalienable rights of liberty, is that every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty by the federal government of the United States of America.

(3) The policy stated herein shall not be applied to impair any right of contract related to the provision of health care services to any person or group.

History.

I.C., § 39-9003, as added by 2010, ch. 46, § 1, p. 84.

RESEARCH REFERENCES

Idaho Law Review. — Sound and Fury, Signifying Nothing: Nullification and the Question of Gubernatorial Executive Power in Idaho, Comment. 49 Idaho L. Rev. 659 (2013).

§ 39-9004. Enforcement. — (1) No public official, employee, or agent of the state of Idaho or any of its political subdivisions, shall act to impose, collect, enforce, or effectuate any penalty in the state of Idaho that violates the public policy set forth in [section 39-9003\(2\), Idaho Code](#).

(2) The attorney general shall take such action as is provided in [section 67-1401\(15\), Idaho Code](#), in the defense or prosecution of rights protected under this act.

History.

[I.C., § 39-9004](#), as added by 2010, ch. 46, § 1, p. 84.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

The term “this act”, in subsection (2), refers to S.L. 2010, ch. 46, which is codified as §§ 39-9001 to 39-9004 and 67-1401.

RESEARCH REFERENCES

Idaho Law Review. — Sound and Fury, Signifying Nothing: Nullification and the Question of Gubernatorial Executive Power in Idaho, Comment. 49 Idaho L. Rev. 659 (2013).

Chapter 91

BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS

Sec.

39-9101. Short title.

39-9102. Declaration of policy and intent.

39-9103. Definitions.

39-9104. Governance of behavioral health community crisis centers.

39-9105. Behavioral health community crisis center evaluation.

39-9106. Behavioral health community crisis center funding.

39-9107. Community contribution.

39-9108. Services to be nondiscriminatory — Fees.

39-9109. Rulemaking authority.

§ 39-9101. Short title. — This chapter shall be known and may be cited as the “Behavioral Health Community Crisis Centers Act.”

History.

I.C., § 39-9101, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9102. Declaration of policy and intent. — (1) Citizens of Idaho experiencing a behavioral health crisis are often incarcerated, hospitalized or treated in hospital emergency departments because an appropriate level of care to meet their needs is not available.

(2) Hospital emergency departments, jails and law enforcement agencies in Idaho have become the default providers of crisis intervention to Idaho citizens with behavioral health disorders. Extensive resources are being unnecessarily expended by law enforcement and hospitals on behavioral health crisis services.

(3) It is the policy of this state that citizens with behavioral health disorders should not be needlessly incarcerated when no crime has been perpetrated or the crime is of a minor nature arising from a behavioral health disorder, crisis or incident.

(4) Therefore, it is the intent of the legislature that behavioral health community crisis centers, hereinafter referred to as crisis centers, be developed and operated, as funding is appropriated, to provide the appropriate level of care to meet the needs of Idahoans experiencing behavioral health crises.

(5) The crisis centers shall be available on a voluntary basis to individuals experiencing a behavioral health crisis. The centers shall provide transitional de-escalation, stabilization and community referral services only, and the centers shall not serve as inpatient or residential facilities.

(6) This chapter and any subsequent administrative rules shall not assume authority over other community efforts to assist Idahoans experiencing behavioral health crises.

History.

I.C., § 39-9102, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9103. Definitions. — (1) “Behavioral health” means an integrated or combined system for evaluation and treatment of mental health and substance use disorders.

(2) “Behavioral health community crisis center” or “crisis center” means a voluntary outpatient facility operated twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days a year to provide evaluation, intervention and referral for individuals experiencing a crisis due to a behavioral health condition. The facility may not provide services to a client for more than twenty-three (23) hours and fifty-nine (59) minutes in a single episode of care.

(3) “Department” means the department of health and welfare.

(4) “Director” means the director of the department of health and welfare.

(5) “Region” means the administrative regions as defined by the department of health and welfare. Two (2) or more regions may consolidate for the purposes of this chapter. For the purposes of this chapter, regions will be consistent with judicial districts.

History.

I.C., § 39-9103, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9104. Governance of behavioral health community crisis centers. — (1) Crisis centers shall be directed by a board of directors. The board of directors shall guide the organization, implementation and operation of the crisis center.

(2) The board shall consist of no fewer than five (5) members and shall include, at a minimum, a local behavioral health consumer, a physician, law enforcement and a county commissioner from within the region.

(3) If the organization contracted for operation of the crisis centers is already governed by a board of directors, the board shall establish an advisory committee to advise it on the organization, implementation and operation of the crisis center.

(4) If the organization contracted for operation of the crisis center develops an advisory committee, the committee shall have no fewer than five (5) members and shall include a local behavioral health consumer, a physician, law enforcement and a county commissioner from within the region.

(5) The term of board or advisory committee membership, appointment authority for members and organizational structures shall be guided by bylaws, articles of incorporation or other policy directives established by the entity operating the facility.

(6) The department, as the state behavioral health authority established by [section 39-3123, Idaho Code](#), shall oversee the crisis centers to ensure compliance with the intent of this chapter, application of the model, associated administrative rules and patient safety. The department shall be authorized to perform annual audits of crisis centers as necessary to fulfill its oversight responsibility.

History.

[I.C., § 39-9104](#), as added by 2014, ch. 131, § 1, p. 365.

§ 39-9105. Behavioral health community crisis center evaluation. — Each crisis center shall annually evaluate the effectiveness and cost efficacy of its center and submit a report of findings to the department of health and welfare by August 1 of each year. The department shall annually report findings of the crisis center evaluations to germane committees of the Idaho legislature.

History.

I.C., § 39-9105, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9106. Behavioral health community crisis center funding. — Subject to appropriation by the legislature, the department shall be responsible for administering, allocating and distributing all appropriations from the legislature for crisis centers.

History.

I.C., § 39-9106, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9107. Community contribution. — Communities that receive state funding to establish a crisis center shall, to the maximum extent possible, contribute financial or in-kind support to the development and operation of the crisis center.

History.

I.C., § 39-9107, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9108. Services to be nondiscriminatory — Fees. — No regional crisis center shall refuse service to any person because of race, color, religion or because of inability to pay. Persons receiving services may be charged fees for the services they receive. The crisis center fee determination schedule shall be approved by the department of health and welfare. Fees collected by the crisis centers shall become part of their budget and utilized at the direction of the crisis center's board or governance committee.

History.

I.C., § 39-9108, as added by 2014, ch. 131, § 1, p. 365.

§ 39-9109. Rulemaking authority. — The director is authorized to promulgate rules necessary to implement the provisions of this chapter that are consistent with its provisions.

History.

I.C., § 39-9109, as added by 2014, ch. 131, § 1, p. 365.

Chapter 92

IDAHO DIRECT PRIMARY CARE ACT

Sec.

39-9201. Short title.

39-9202. Public policy.

39-9203. Definitions.

39-9204. Direct primary care agreement provisions.

39-9205. Insurance billing prohibited.

39-9206. Agreements not classified as insurance.

39-9207. Disclaimer.

39-9208. Restrictions on transfer.

39-9209. Effect of this chapter.

§ 39-9201. Short title. — This chapter shall be known and may be cited as the “Idaho Direct Primary Care Act.”

History.

I.C., § 39-9201, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9202. Public policy. — It is the policy of the state of Idaho to promote personal responsibility for health care and the cost-effective delivery of medical services by encouraging innovative use of direct patient-provider practices for primary medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and individual primary care providers may wish to establish direct agreements with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider agreements that satisfy the provisions of this chapter do not constitute insurance.

History.

I.C., § 39-9202, as added by 2015, ch. 291, § 1, p. 1164.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the last sentence refers to S.L. 2015, Chapter 291, which is codified as §§ 39-9201 to 39-9209. The reference probably should be to “this chapter,” being chapter 92, title 39, Idaho Code.

§ 39-9203. Definitions. — For purposes of this chapter, the following definitions apply:

(1) “Direct fee” means an agreed-upon fee charged by a primary care provider as consideration for providing and being available to provide direct primary care services described in a direct primary care agreement.

(2) “Direct primary care agreement” means a written contract between a primary care provider and an individual patient or a patient’s representative in which the primary care provider agrees to provide direct primary care services to the patient over a specified period of time for payment of a direct fee.

(3) “Direct primary care services” means those services that a primary care provider is licensed or otherwise legally authorized to provide and may include, but are not limited to, such services as screening, assessment, diagnosis and treatment for the purpose of promoting health; detection, management and care of disease or injury; or routine preventive or diagnostic dental treatment. Such services may be provided in a primary care provider’s office, the patient’s home or other locations where a patient visit with the primary care provider needs to occur.

(4) “Patient” means a person who is entitled to receive direct primary care services under a direct care agreement.

(5) “Patient’s representative” means a person identified in [section 39-4504\(1\)\(a\) through \(g\), Idaho Code](#).

(6) “Primary care provider” means a natural person licensed or otherwise legally authorized to provide health care services in the state of Idaho in the field of pediatrics, family medicine, internal medicine or dentistry, who provides such services either alone or in professional association with others in a form and within a scope permitted by such licensure or legal authorization for the provision of such services, and who enters into a direct primary care agreement.

History.

[I.C., § 39-9203](#), as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9204. Direct primary care agreement provisions. — (1) A direct primary care agreement shall identify:

- (a) The primary care provider and the patient;
- (b) The general scope of services as well as the specific services to be provided by the primary care provider;
- (c) The location or locations where services are to be provided;
- (d) The amount of the direct fee and the time interval at which it is to be paid; and
- (e) The term of the agreement and the conditions upon which it may be terminated by the primary care provider. The agreement shall be terminable at will by written notice from the patient to the primary care provider.

(2) If a party provides written notice of termination of the direct primary care agreement, the primary care provider shall refund to the patient all unearned direct fees within thirty (30) days following the notice of termination.

History.

I.C., § 39-9204, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9205. Insurance billing prohibited. — Neither the patient nor the primary care provider shall submit a bill to an insurer for the services provided under a direct primary care agreement.

History.

I.C., § 39-9205, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9206. Agreements not classified as insurance. — Direct primary care agreements are not subject to regulation as insurance under title 41, Idaho Code.

History.

I.C., § 39-9206, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9207. Disclaimer. — A direct primary care agreement shall include the following disclaimer: “This agreement does not provide health insurance coverage, including the minimal essential coverage required by applicable federal law. It provides only the services described herein. It is recommended that health care insurance be obtained to cover medical services not provided for under this direct primary care agreement.”

History.

I.C., § 39-9207, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9208. Restrictions on transfer. — A direct primary care agreement may not be sold or transferred by the primary care provider without the written consent of the patient and may be transferred only to another primary care provider. A direct primary care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a primary care provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives but said marketing materials are subject to chapter 6, title 48, Idaho Code.

History.

I.C., § 39-9208, as added by 2015, ch. 291, § 1, p. 1164.

§ 39-9209. Effect of this chapter. — This chapter does not prohibit health care providers who are not primary care providers from entering into agreements with patients to the extent such agreements do not violate the provisions of title 41, Idaho Code.

History.

I.C., § 39-9209, as added by 2015, ch. 291, § 1, p. 1164.

Chapter 93

IDAHO UNBORN INFANTS DIGNITY ACT

Sec.

39-9301. Short title.

39-9302. Legislative findings and purpose.

39-9303. Definitions.

39-9304. Release of remains for final disposition.

39-9305. Miscarriage certificates.

39-9306. Prohibitions.

39-9307. Informed consent required for certain experimentation.

39-9308. Criminal penalties.

39-9309. Duties of the attorney general and prosecutors.

39-9310. Civil and administrative actions.

39-9311. Construction.

STATUTORY NOTES

Compiler's Notes.

S.L. 2016, Chapter 168 and S.L. 2016, Chapter 368 each enacted a new chapter 93 in title 39 of the Idaho Code. S.L. 2016, Chapter 368 remained as enacted. S.L. 2016, Chapter 168 was redesignated by the compiler, through the use of brackets as chapter 94, title 39, Idaho Code. The redesignation of S.L. 2016, chapter 168 was made permanent by S.L. 2017, ch. 58, § 19.

§ 39-9301. Short title. — This chapter shall be known and may be cited as the “Idaho Unborn Infants Dignity Act.”

History.

I.C., § 39-9301, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler’s Notes.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 39-9302. Legislative findings and purpose. — (1) The legislature of the state of Idaho finds that:

(a) Deceased unborn infants deserve the same respect and dignity as other deceased human beings.

(b) It continues to be the public policy of the state of Idaho to promote live childbirth over abortion. Permitting the sale, transfer, distribution or donation of the bodily remains of aborted infants, particularly for pecuniary gain, and the use of the remains of aborted infants for experimentation undermine that public policy as well as proper ethical standards of medical conduct.

(c) It is contrary to the public policy of the state of Idaho for an individual to become pregnant for the purpose of aborting an unborn infant and thereafter selling, transferring, distributing or donating the unborn infant's bodily remains for experimentation or other use.

(2) Based on the findings in subsection (1) of this section, the purpose of this chapter is to:

(a) Prohibit the sale, transfer, distribution or other unlawful disposition of an unborn infant or the bodily remains of an aborted infant;

(b) Prohibit the use of bodily remains of aborted infants for experimentation;

(c) Ensure that the bodily remains of unborn infants whose death resulted from an occurrence other than abortion are not sold, transferred or distributed for experimentation without the mother's informed, written consent; and

(d) In accordance with the provisions of this chapter, prohibit all Idaho institutions of higher education that receive public moneys from engaging in medical research using organs or tissue, including human embryonic stem cells, obtained from aborted infants.

History.

I.C., § 39-9302, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 39-9303. Definitions. — As used in this chapter:

(1) “Aborted infant” means a deceased unborn infant whose death was caused by abortion.

(2) “Abortion” has the same meaning as provided in [section 18-604, Idaho Code](#).

(3) “Bodily remains” means the physical remains, body parts or tissue of a deceased unborn infant who has been expelled or extracted from the infant’s mother.

(4) “Experiment” or “experimentation” means the use of bodily remains, including embryonic stem cells, or the use of an unborn infant intended to be aborted, in any trial, test, procedure or observation carried out with the goal of verifying, refuting or establishing the validity of a hypothesis, but does not include:

(a) Diagnostic or remedial tests, procedures or observations that have the purpose of promoting the life or health of an unborn infant or of the mother of an unborn infant; or

(b) Pathological study.

(5) “Fetal death” means the death of an unborn infant prior to expulsion or extraction from the unborn infant’s mother, provided that the unborn infant reached a stage of development such that there are cartilaginous structures or fetal or skeletal parts. The unborn infant’s death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as a heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

(6) “Final disposition” means the burial, cremation or other legal disposition of a deceased unborn infant.

(7) “Miscarriage” means the spontaneous or accidental death of an unborn infant in utero other than by induced abortion or stillbirth. The infant’s death is indicated by the fact that, after the expulsion or extraction of the unborn infant, the infant does not breathe or show any other evidence

of life such as a heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

(8) “Pathological” means the examination of body tissue for diagnostic or forensic purposes and any related activities necessary to perform such a study. The term “study” includes any study or test, genetic or otherwise, to determine paternity or the cause of death.

(9) “Stillbirth” has the same meaning as provided in [section 39-241, Idaho Code](#).

(10) “Unborn infant” has the same meaning as “fetus” and “unborn child” as provided in [section 18-604, Idaho Code](#).

History.

[I.C., § 39-9303](#), as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler’s Notes.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 39-9304. Release of remains for final disposition. — In every instance of fetal death involving miscarriage or stillbirth, the individual in charge of the institution where the bodily remains of the deceased unborn infant were expelled or extracted, or the individual's designee, shall notify the mother or the mother's authorized representative that the mother has a right to direct the receipt and disposition of her deceased unborn infant's bodily remains. Upon request by the mother or her authorized representative, the institution shall make arrangements for the release of the bodily remains to the mother or her authorized representative for final disposition in accordance with applicable law.

History.

I.C., § 39-9304, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 39-9305. Miscarriage certificates. — The state registrar of vital statistics shall establish such forms and procedures as are necessary to file miscarriage certificates for unborn infants whose death occurred as a result of miscarriage. The filing of a miscarriage certificate shall be voluntary at the request of the unborn infant's parent or parents and shall be filed only if the miscarriage is certified by a physician, a physician's assistant or an advanced practice registered nurse.

History.

I.C., § 39-9305, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Cross References.

State registrar of vital statistics, § 39-243.

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 39-9306. Prohibitions. — (1) Except as otherwise provided in this chapter, no person shall knowingly sell, transfer, distribute, donate, accept, use or attempt to use the body or bodily remains of an aborted infant.

(2) Except as otherwise provided in this chapter, no person shall knowingly aid or abet any such sale, transfer, distribution, other unlawful disposition, acceptance, use or attempted use of the body or bodily remains of an aborted infant.

(3) Except as otherwise provided in this chapter, no person or public institution operating in Idaho shall knowingly use an unborn infant or the bodily remains or embryonic stem cells of an aborted infant in animal or human research, experimentation or study, or for transplantation, except:

(a) For diagnostic or remedial procedures that have the purpose of promoting the life or health of the unborn infant or the unborn infant's mother;

(b) For pathological study; or

(c) For the applicable materials used in research projects and grants that were undertaken or made before July 1, 2016.

(4) Except as otherwise provided in this chapter, no person shall knowingly experiment upon an unborn infant who is intended to be aborted unless the experimentation is therapeutic to the unborn infant.

(5) The terms “transfer,” “accept” and “acceptance” as used in this section do not apply to the transfer or acceptance of the body or bodily remains of an aborted infant for the sole purpose of lawfully disposing of the body or bodily remains of the aborted infant.

History.

I.C., § 39-9306, as added by 2016, ch. 368, § 1, p. 1078; am. 2017, ch. 298, § 1, p. 796.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 298, rewrote paragraph (3)(c), which formerly read: “For the completion of research projects and grants that were undertaken or made before July 1, 2016. Such projects and grants shall not be extended or renewed”.

Compiler’s Notes.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 39-9307. Informed consent required for certain experimentation.

— Bodily remains of an unborn infant whose death occurred as a result of miscarriage or stillbirth may be used for animal or human research, experimentation, study or transplantation only if the mother of the deceased unborn infant makes a signed, written statement declaring that:

(1) The mother donates the specific bodily remains for animal or human research, experimentation, study or transplantation; (2) The donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of any bodily remains; (3) The mother has not been informed of the identity of any individuals who may be recipients of transplantations of bodily remains; (4) The mother understands her right to obtain the bodily remains for final disposition in accordance with the provisions of this act; and (5) Full disclosure has been provided to the mother with regard to the attending physician's interest, if any, in the research, experimentation, study or transplantation to be conducted with specific bodily remains.

History.

I.C., § 39-9307, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsection (4) refers to S.L. 2016, Chapter 368, which is codified as §§ 39-9301 to 39-9311.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 39-9308. Criminal penalties. — (1) A person who violates section 39-9306(1) or (2), Idaho Code, shall be guilty of a felony for each violation and shall be subject to a fine not to exceed ten thousand dollars (\$10,000), imprisonment in the state prison for a term not to exceed five (5) years, or both.

(2) A person who violates section 39-9306(3) or (4), Idaho Code, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000), imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of section 39-9306(3) or (4), Idaho Code, who previously has pled guilty to or been found guilty of a violation of either such subsection, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a felony and shall be subject to a fine not to exceed ten thousand dollars (\$10,000), imprisonment in the state prison not to exceed one (1) year, or both.

History.

I.C., § 39-9308, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 39-9309. Duties of the attorney general and prosecutors. — The Idaho attorney general or the appropriate prosecuting attorney may initiate actions or proceedings for a violation of any criminal provisions in this chapter.

History.

I.C., § 39-9309, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 39-9310. Civil and administrative actions. — (1) In addition to the remedies available under the statutory or common laws of Idaho, failure to comply with the requirements of [section 39-9306, Idaho Code](#), shall provide a basis for recovery of damages for the parent of an unborn infant or, if the mother is a minor, for the parent or guardian of the mother of an unborn infant, for the unlawful disposition of or experimentation on an unborn infant or on bodily remains.

(2) Any conviction of a health care provider for failure to comply with the requirements of [section 39-9306, Idaho Code](#), shall result in the suspension of such provider's license for a period of at least one (1) year, and such license shall be reinstated after that time only under such conditions as the Idaho board of medicine shall require to ensure compliance with this chapter.

History.

[I.C., § 39-9310](#), as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 39-9311. Construction. — Nothing in this chapter shall be construed to create or recognize a right to abortion.

History.

I.C., § 39-9311, as added by 2016, ch. 368, § 1, p. 1078.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2016, ch. 368 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Chapter 94

RIGHT TO TRY ACT

Sec.

39-9401. Short title.

39-9402. Legislative intent.

39-9403. Definitions.

39-9404. Investigational drugs — Right to try and provide.

39-9405. No coverage obligation.

39-9406. Heirs not liable for treatment debt.

39-9407. Prohibitions.

39-9408. Limitations.

39-9409. Mandatory coverage not affected.

STATUTORY NOTES

Compiler's Notes.

S.L. 2016, Chapter 168 and S.L. 2016, Chapter 368 each enacted a new chapter 93 in title 39 of the Idaho Code. S.L. 2016, Chapter 368 remained as enacted. S.L. 2016, Chapter 168 was redesignated by the compiler, through the use of brackets, as chapter 94, title 39, Idaho Code. The redesignation was made permanent by S.L. 2017, ch. 58, § 19.

§ 39-9401. Short title. — This chapter shall be known and may be cited as the “Right to Try Act.”

History.

I.C., § 39-9301, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9301.

§ 39-9402. Legislative intent. — It is the intent of the legislature to provide the opportunity for terminally ill patients to have access to certain investigational treatments without requiring another party, including a physician, manufacturer, insurer or government agency, to offer, provide or pay for such treatments. By enacting this chapter, the legislature intends only to permit these treatments to terminally ill patients in Idaho. It is not the intent of the legislature to create an obligation but to ensure that all persons or parties availing themselves of this chapter do so voluntarily. Due to the experimental nature of these treatments, it is further the intent of the legislature to protect physicians and other parties from civil, criminal or professional liability relating to the treatments.

History.

I.C., § 39-9302, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9302.

§ 39-9403. Definitions. — As used in this chapter:

(1) “Eligible patient” or “patient” means an individual who has a terminal illness and has:

(a) Considered all other treatment options currently approved by the United States food and drug administration;

(b) Received a recommendation from the patient’s treating physician for an investigational drug, biological product or device for purposes related to the terminal illness;

(c) Given written, informed consent for the use of the recommended investigational drug, biological product or device; and

(d) Received documentation from the eligible patient’s treating physician that the eligible patient meets the requirements of this subsection.

(2) “Investigational drug, biological product or device” means a drug, biological product or device that has successfully completed phase 1 of a clinical trial but has not yet been approved for general use by the United States food and drug administration and remains under investigation in a United States food and drug administration-approved clinical trial.

(3) “Terminal illness” means a progressive disease or medical or surgical condition that:

(a) Entails functional impairment that significantly impacts the patient’s activities of daily living;

(b) Is not considered by a treating physician to be reversible even with administration of current United States food and drug administration-approved and available treatments; and

(c) Without life-sustaining procedures, will soon result in death.

(4) “Written, informed consent” means a written document that is signed by the eligible patient and, if the patient is a minor, a parent or legal guardian, which document is attested to by the patient’s physician and a witness and that includes the following:

- (a) An explanation of the currently approved products and treatments for the disease or condition from which the patient suffers;
- (b) An attestation that the patient concurs with the patient's physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;
- (c) Clear identification of the specific proposed investigational drug, biological product or device that the patient is seeking to use;
- (d) A description of the potentially best and worst outcomes of using the investigational drug, biological product or device and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;
- (e) A statement that the patient's health plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product or device unless specifically required to do so by law or contract;
- (f) A statement that the patient's eligibility for hospice care might be withdrawn if the patient begins curative treatment with the investigational drug, biological product or device and that care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements; and
- (g) A statement that the patient understands that the patient is responsible for all expenses consequent to the use of the investigational drug, biological product or device and that this liability extends to the patient's estate unless a contract between the patient and the manufacturer of the drug, biological product or device states otherwise.

History.

I.C., § 39-9303, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9303.

§ 39-9404. Investigational drugs — Right to try and provide. — (1)

An eligible patient may request, and a manufacturer may make available to an eligible patient under the supervision of the patient's treating physician, the manufacturer's investigational drug, biological product or device, which drug, product or device shall be clearly labeled as investigational; provided however, that this chapter does not require that a manufacturer make available an investigational drug, biological product or device to an eligible patient.

(2) A manufacturer may: (a) Provide an investigational drug, biological product or device to an eligible patient without receiving compensation; or (b) Require an eligible patient to pay the costs associated with the manufacture of the investigational drug, biological product or device.

History.

I.C., § 39-9304, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9304.

Federal References.

For further information on the United States food and drug administration, see *<http://www.fda.gov>*.

§ 39-9405. No coverage obligation. — (1) This chapter does not expand the coverage required of an insurer under the laws of this state.

(2) A health plan, third-party administrator or government agency may, but is not required to, provide coverage for the cost of an investigational drug, biological product or device or the cost of services related to the use of an investigational drug, biological product or device.

(3) This chapter does not require any health plan, third-party administrator or government agency to pay costs associated with the use of an investigational drug, biological product or device.

(4) This chapter does not require a hospital or facility licensed in this state to provide new or additional services unless such services are approved by the hospital or facility.

History.

I.C., § 39-9305, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9305.

§ 39-9406. Heirs not liable for treatment debt. — If a patient dies while being treated by an investigational drug, biological product or device under the terms of this chapter, the patient's heirs are not liable for any outstanding debt related to the treatment or lack of insurance due to the treatment.

History.

I.C., § 39-9306, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9306.

§ 39-9407. Prohibitions. — (1) A licensing board or disciplinary body of this state shall not revoke, fail to renew, suspend or take any action against a health care provider's license based solely on the provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product or device as allowed under this act.

(2) An entity responsible for medicare certification shall not take action against a health care provider's medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product or device as allowed under this act.

(3) An official, employee or agent of this state shall not block or attempt to block an eligible patient's access to an investigational drug, biological product or device as allowed under this act.

History.

I.C., § 39-9307, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9307.

Compiler's Notes.

The term "this act" at the end of subsections (2) and (3) refers to S.L. 2016, Chapter 168, which is codified as §§ 39-9401 to 39-9409.

§ 39-9408. Limitations. — (1) This chapter does not create a private cause of action against a manufacturer of an investigational drug, biological product or device or against a physician or any other person or entity involved in the care of an eligible patient using an investigational drug, biological product or device for any harm done to the eligible patient resulting from the investigational drug, biological product or device, provided that the manufacturer, physician, or person or entity has exercised reasonable care and complied in good faith with the terms of this chapter.

(2) This chapter does not create a private cause of action against a treating physician who refuses to recommend an investigational drug, biological product or device to a patient with a terminal illness.

History.

I.C., § 39-9308, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9308.

§ 39-9409. Mandatory coverage not affected. — This chapter does not affect any mandatory health care coverage for participation in clinical trials provided elsewhere by law.

History.

I.C., § 39-9309, as added by 2016, ch. 168, § 1, p. 466; am. and redesign. 2017, ch. 58, § 19, p. 91.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 58, redesignated this section from § 39-9309.

Chapter 95

ABORTION COMPLICATIONS REPORTING ACT

Sec.

39-9501. Short title.

39-9502. Legislative findings and purpose.

39-9503. Definitions.

39-9504. Abortion complication reporting.

39-9505. Reporting forms.

39-9506. Penalties and professional sanctions.

39-9507. Construction.

39-9508. Right of intervention.

39-9509. Severability.

§ 39-9501. Short title. — This act shall be known and may be cited as the “Abortion Complications Reporting Act.”

History.

I.C., § 39-9501, as added by 2018, ch. 225, § 1, p. 509.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2018, Chapter 225, which is codified as §§ 39-9501 through 39-9509, 54-1413, and 54-1814. The term should probably read “this chapter,” being chapter 95, title 39, Idaho Code.

§ 39-9502. Legislative findings and purpose. — (1) The legislature of the state of Idaho asserts and finds that:

(a) The state “has legitimate interests from the outset of pregnancy in protecting the health of women,” as found by the United States Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey* ;

(b) Specifically, the state “has a legitimate concern with the health of women who undergo abortions,” as found by the United States Supreme Court in *Akron v. Akron Ctr. for Reproductive Health, Inc.* ;

(c) Surgical abortion is an invasive procedure that can cause severe physical and psychological complications for women, both short-term and long-term, including, but not limited to, uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion, retained tissue, pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs, an increased risk for developing breast cancer, psychological or emotional complications such as depression, suicidal ideation, anxiety and sleeping disorders, and death;

(d) To facilitate reliable scientific studies and research on the safety and efficacy of abortion, it is essential that the medical and public health communities have access to accurate information both on the abortion procedure and on complications resulting from abortion;

(e) Abortion “record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient’s confidentiality and privacy are permissible,” according to the United States Supreme Court in *Planned Parenthood v. Danforth* ;

(f) Abortion and complication reporting provisions do not impose an undue burden on a woman’s right to choose whether or not to terminate a pregnancy. Specifically, the “collection of information with respect to actual patients is a vital element of medical research, and so it cannot be

said that the requirements serve no purpose other than to make abortions more difficult,” as found by the United States Supreme Court in *Planned Parenthood v. Casey* ;

(g) The use of RU-486 as part of a chemical abortion can cause significant medical risks including, but not limited to, abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, infections and pelvic inflammatory disease;

(h) The risk of abortion complications increases with advancing gestational age;

(i) Studies document that increased rates of complications, including incomplete abortion, occur even within the gestational limit approved by the federal food and drug administration (FDA);

(j) In July 2011, the FDA reported two thousand two hundred seven (2,207) adverse events after women used RU-486 for abortions. Among these events were fourteen (14) deaths, six hundred twelve (612) hospitalizations, three hundred thirty-nine (339) blood transfusions, and two hundred fifty-six (256) infections, including forty-eight (48) severe infections;

(k) The adverse event reports systems relied upon by the FDA have limitations and typically detect only a small proportion of events that actually occur. Furthermore, the FDA has failed to publicly release data since 2011, and it is necessary to develop a state-based information system in the wake of court rulings legalizing telemedicine abortions; and

(l) To promote its interest in maternal health and life, the state of Idaho maintains an interest in:

(i) Collecting information on all complications from all abortions performed in the state; and

(ii) Compiling statistical reports based on abortion complication information collected pursuant to this chapter for future scientific studies and public health research.

(2) Based on the findings in subsection (1) of this section, it is the purpose of this chapter to promote the health and safety of women by

adding to the sum of medical and public health knowledge through the compilation of relevant data on all abortions performed in the state, as well as on all medical complications and maternal deaths resulting from these abortions.

History.

I.C., § 39-9502, as added by 2018, ch. 225, § 1, p. 509.

STATUTORY NOTES

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

For more information on the federal food and drug administration, see <https://www.fda.gov>.

§ 39-9503. Definitions. — As used in this chapter:

(1) “Abortion” shall have the same meaning as provided in [section 18-502, Idaho Code](#).

(2) “Complication” means any of the following, if it constitutes an abnormal or a deviant process or event arising from the performance or completion of an abortion: (a) Uterine perforation or injury to the uterus; (b) Injury or damage to any organ; (c) Cervical perforation or injury to the cervix; (d) Infection;

(e) Heavy or excessive bleeding; (f) Hemorrhage;

(g) Blood clots;

(h) Blood transfusion;

(i) Failure to actually terminate the pregnancy; (j) Incomplete abortion or retained tissue; (k) Weakness, nausea, vomiting or diarrhea that lasts more than twenty-four (24) hours; (l) Pain or cramps that do not improve with medication; (m) A fever of one hundred and four-tenths (100.4) degrees or higher for more than twenty-four (24) hours; (n) Hemolytic reaction due to the administration of ABO-incompatible blood or blood products; (o) Hypoglycemia where onset occurs while the patient is being cared for in the abortion facility; (p) Pelvic inflammatory disease; (q) Endometritis;

(r) Missed ectopic pregnancy;

(s) Cardiac arrest;

(t) Respiratory arrest;

(u) Renal failure;

(v) Metabolic disorder;

(w) Shock;

(x) Embolism;

(y) Coma;

(z) Placenta previa or preterm delivery in subsequent pregnancies; (aa) Free fluid in the abdomen; (bb) Adverse or allergic reaction to anesthesia or other drugs; (cc) Subsequent development of breast cancer; (dd) Death;

(ee) Any psychological or emotional condition reported by the patient, such as depression, suicidal ideation, anxiety or a sleeping disorder; or (ff) Any other adverse event as defined by the federal food and drug administration criteria provided in the medwatch reporting system.

(3) “Department” means the state department of health and welfare.

(4) “Facility” means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical center or other institution or location where medical care is provided to any person.

(5) “Hospital” means any institution licensed as a hospital pursuant to chapter 13, title 39, Idaho Code.

(6) “Medical practitioner” means a licensed medical care provider capable of making a diagnosis within the scope of such provider’s license.

(7) “Pregnant” or “pregnancy” means the reproductive condition of having an unborn child in the uterus.

History.

I.C., § 39-9503, as added by 2018, ch. 225, § 1, p. 509; am. 2019, ch. 50, § 1, p. 135.

STATUTORY NOTES

Cross References.

Idaho department of health and welfare, § 56-1001 et seq.

Amendments.

The 2019 amendment, by ch. 50, in subsection (2), rewrote the introductory paragraph, which formerly read: “Complication’ means an abnormal or a deviant process or event arising from the performance or completion of an abortion, as follows”, deleted former paragraph (k), which read: “The need for follow-up care, surgery or an aspiration procedure for

incomplete abortion or retained tissue”, deleted former paragraph (q), which read: “Physical injury associated with care received in the abortion facility”, deleted former paragraphs (ff) to (hh), which read: “(ff) Inability, refusal or unwillingness to have follow-up care, surgery or an aspiration procedure following an incomplete abortion or retained tissue, (gg) Inability, refusal or unwillingness to have a follow-up visit, (hh) Referral to or care provided by a hospital, emergency department or urgent care clinic or department”, and redesignated the remaining paragraphs accordingly.

Compiler’s Notes.

For more information on the federal food and drug administration, see <https://www.fda.gov>.

For more information on the FDA’s MedWatch reporting system, see <https://www.fda.gov/Safety/MedWatch/default.htm>.

Effective Dates.

Section 3 of S.L. 2019, ch. 50 declared an emergency. Approved. March 7, 2019.

§ 39-9504. Abortion complication reporting. — (1) Every hospital, licensed health care facility or individual medical practitioner shall file a written report with the department regarding each woman who comes under the hospital's, health care facility's or medical practitioner's care and receives treatment for any item listed in [section 39-9503\(2\), Idaho Code](#), that the attending medical practitioner has reason to believe, in the practitioner's reasonable medical judgment, constitutes an abnormal or a deviant process or event arising from the performance or completion of an abortion. Such reports shall be completed by the hospital, health care facility or attending medical practitioner who treated the woman, signed by the attending medical practitioner and transmitted to the department within ninety (90) days from the last date of treatment or other care or consultation for the complication.

(2) Every hospital, licensed health care facility or individual medical practitioner required to submit a complication report shall attempt to ascertain and shall report on the following:

- (a) The age and race of the woman;
- (b) The woman's state and county of residence;
- (c) The number of previous pregnancies, number of live births and number of previous abortions of the woman;
- (d) The date the abortion was performed and the date that the abortion was completed, as well as the gestational age of the fetus, as defined in [section 18-604, Idaho Code](#), and the methods used;
- (e) Identification of the physician who performed the abortion, the facility where the abortion was performed and the referring medical practitioner, agency or service, if any;
- (f) The specific complication, as that term is defined in [section 39-9503\(2\), Idaho Code](#), including, where applicable, the location of the complication in the woman's body, the date on which the complication occurred and whether there were any preexisting medical conditions that would potentially complicate pregnancy or the abortion;

(g) Whether any post-abortion follow-up visit was scheduled or required by the abortion provider and, if so, whether the woman refused or failed to attend such follow-up visit;

(h) Whether the woman was referred to a hospital, emergency department, or urgent care clinic or department for treatment for any item listed in [section 39-9503\(2\), Idaho Code](#);

(i) Any follow-up care, surgery, or aspiration procedure performed because of incomplete abortion or retained tissue; and

(j) Whether the woman received treatment from any other medical practitioner for the specific complication and, if so, when such previous treatment occurred, and the medical practitioner or practitioners who provided the treatment.

(3) Reports required under this section shall not contain:

(a) The name of the woman;

(b) Common identifiers such as the woman's social security number or motor vehicle operator's license number; or

(c) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained an abortion and subsequently suffered an abortion-related complication.

(4) The department shall prepare a comprehensive annual statistical report for the legislature based on the data gathered from reports under this section. The statistical report shall not lead to the disclosure of the identity of any medical practitioner, or any person filing a report under this section nor of a woman about whom a report is filed. The aggregate data shall also be made independently available to the public by the department in a downloadable format.

(5) The department shall summarize aggregate data from the reports required under this chapter and submit the data to the federal centers for disease control and prevention for the purpose of inclusion in the annual vital statistics report. The aggregate data shall also be made independently available to the public by the department in a downloadable format.

(6) Reports filed pursuant to this section shall not be deemed public records and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court after application showing good cause. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

(7) Absent a valid court order or judicial subpoena, the department, any other state department, agency or office, or any employees or contractor thereof shall not compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, a comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain an abortion.

(8) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the department, any other state department, agency or office, or any employee or contractor thereof.

(9) The department or an employee or contractor of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section in a manner or fashion that would permit the person or entity to whom the report is disclosed to identify, in any way or under any circumstances, the woman who is the subject of the report.

(10) Original copies of all reports filed under this section shall be available to the state board of medicine for use in the performance of its official duties.

(11) The department shall communicate this reporting requirement to all medical professional organizations, medical practitioners, hospitals, emergency departments, abortion facilities, clinics, ambulatory surgical facilities, and other health care facilities operating in the state.

History.

I.C., § 39-9504, as added by 2018, ch. 225, § 1, p. 509; am. 2019, ch. 50, § 2, p. 135.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Amendments.

The 2019 amendment, by ch. 50, rewrote the first sentence in subsection (1), which formerly read: “Every hospital, licensed health care facility or individual medical practitioner shall file a written report with the department regarding each woman who comes under the hospital’s, health care facility’s or medical practitioner’s care and reports any complication, requires medical treatment or suffers death that the attending medical practitioner has reason to believe, in the practitioner’s reasonable medical judgment, is a direct or an indirect result of an abortion”; and added paragraphs (g) to (j) in subsection (2).

Effective Dates.

Section 3 of S.L. 2019, ch. 50 declared an emergency. Approved. March 7, 2019.

§ 39-9505. Reporting forms. — The department shall create the forms required by this chapter within sixty (60) days after the effective date of this chapter. Such forms shall provide for the reporting of information required by [section 39-9504\(2\), Idaho Code](#). No provision of this chapter requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms are first created or until the effective date of this chapter, whichever is later.

History.

[I.C., § 39-9505](#), as added by 2018, ch. 225, § 1, p. 509.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this chapter” in the first and last sentences refers to the effective date of S.L. 2018, Chapter 225, which was effective July 1, 2018.

§ 39-9506. Penalties and professional sanctions. — (1) Any person who willfully delivers or discloses to the department any report, record or information required pursuant to this chapter and known by him or her to be false is guilty of a misdemeanor.

(2) Any person who willfully discloses any information obtained from reports filed pursuant to this chapter, other than the disclosure authorized by this chapter or otherwise authorized by law, is guilty of a misdemeanor.

(3) Any person required under this chapter to file a report, keep any records or supply any information, who willfully fails to file such report, keep such records or supply such information at the time or times required by law or rule, is: (a) Guilty of unprofessional conduct, and his or her professional license is subject to discipline in accordance with procedures governing his or her license; and (b) Subject to a civil fine of five hundred dollars (\$500) for each instance of failure to report, if such person is a medical practitioner responsible for filing an adverse reaction report with the department.

(4) In addition to the above penalties, any facility that willfully violates any of the requirements of this chapter shall: (a) In the case of a first violation, be subject to a civil fine of one thousand dollars (\$1,000) for each instance of failure to report; (b) Have its license suspended for a period of six (6) months for the second violation; and

(c) Have its license suspended for a period of one (1) year upon a third or subsequent violation.

History.

I.C., § 39-9506, as added by 2018, ch. 225, § 1, p. 509.

§ 39-9507. Construction. — (1) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of this chapter to make lawful an abortion that is currently unlawful.

History.

I.C., § 39-9507, as added by 2018, ch. 225, § 1, p. 509.

§ 39-9508. Right of intervention. — The legislature, by concurrent resolution, may appoint one (1) or more of its members who sponsored or co-sponsored this chapter in his or her official capacity, or other member or members if the original sponsors and co-sponsors are no longer serving, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

History.

I.C., § 39-9508, as added by 2018, ch. 225, § 1, p. 509.

§ 39-9509. Severability. — The provisions of this chapter are hereby declared to be severable, and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 39-9509, as added by 2018, ch. 225, § 1, p. 509.

Chapter 96

MATERNAL MORTALITY REVIEW

Sec.

39-9601. Legislative findings. [Null and void, effective July 1, 2023.]

39-9602. Definitions. [Null and void, effective July 1, 2023.]

39-9603. Establishment of maternal mortality review committee. [Null and void, effective July 1, 2023.]

39-9604. Proceedings, records, confidentiality, and immunity. [Null and void, effective July 1, 2023.]

39-9605. Access to records. [Null and void, effective July 1, 2023.]

39-9606. Rulemaking. [Null and void, effective July 1, 2023.]

§ 39-9601. Legislative findings. [Null and void, effective July 1, 2023.]

— The legislature of the state of Idaho finds that:

(1) According to the world health organization, maternal mortality rates worldwide dropped 44% between 1990 and 2015, but increased in the United States; (2) The institute for health metrics and evaluation at the university of Washington found the United States has a maternal death rate of 26.4 per 100,000 live births, compared to other countries such as the United Kingdom (9.2), Germany (9), France (7.8), Canada (7.3), Spain (5.6), Italy (4.2), and Finland (3.8); (3) In 2018, Idaho ranked thirty-first out of fifty states in rates of maternal mortality, according to the centers for disease control and prevention. Per Idaho vital statistics, Idaho's maternal death rate in 2017 was 27.1 deaths per 100,000 live births; (4) Maternal deaths are a serious public health concern and have a tremendous family and societal impact; (5) No statewide process currently exists for the confidential identification, investigation, or dissemination of findings regarding maternal deaths; and (6) The state has a public health interest in the establishment of a process for review of maternal deaths in order to develop strategies for the prevention of maternal deaths.

History.

I.C., § 39-9601, as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

Compiler's Notes.

For further information on the world health organization, referred to in subsection (1), see *<https://www.who.int>*.

For further information on the institute for health metrics and evaluation, referred to in subsection (2), see *<http://www.healthdata.org>*.

For further information on maternal mortality and the centers for disease control and prevention, referred to in subsection (3), see *<https://www.cdc.gov/vitalsigns/maternal-deaths>*.

§ 39-9602. Definitions. [Null and void, effective July 1, 2023.] — As used in this chapter:

(1) “Committee” means the maternal mortality review committee established by [section 39-9603, Idaho Code](#).

(2) “Department” means the state department of health and welfare.

(3) “Maternal death” means the death of a woman from any cause during pregnancy or within one (1) year following the end of the pregnancy.

History.

[I.C., § 39-9602](#), as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

Cross References.

Department of health and welfare, § 56-1001 et seq.

§ 39-9603. Establishment of maternal mortality review committee. [Null and void, effective July 1, 2023.] — (1) There is hereby established in the department a maternal mortality review committee, which committee shall conduct comprehensive, multidisciplinary reviews of maternal deaths in Idaho for the purposes of identifying factors associated with the deaths and to make policy recommendations to improve health care services for women and reduce the incidence of maternal mortality in the state. The department may enter into a contract with a third party for administrative functions of the committee.

(2) The committee shall consist of at least twelve (12) but no more than fifteen (15) members selected by the department, to include: (a) Five (5) physicians licensed under chapter 18, title 54, Idaho Code, with one (1) each from the following medical specialties: (i) Family medicine with a practice that includes maternity care and delivery; (ii) Obstetrics and gynecology;

(iii) Maternal fetal medicine;

(iv) Family medicine, obstetrics and gynecology, or emergency medicine that includes maternity care and delivery in a rural setting; and (v) Medical examiner or pathologist or other physician who conducts autopsies; (b) One (1) advanced practice professional nurse midwife licensed under chapter 14, title 54, Idaho Code; (c) One (1) registered nurse licensed under chapter 14, title 54, Idaho Code, working in labor and delivery; (d) One (1) midwife licensed under chapter 55, title 54, Idaho Code; (e) One (1) coroner;

(f) One (1) master social worker licensed under chapter 32, title 54, Idaho Code; (g) One (1) emergency medical services provider licensed under chapter 10, title 56, Idaho Code; and (h) One (1) public health representative with an expertise in maternal and child health.

(3) In selecting committee members, the department shall consider a composition that is reasonably representative of the state's geographic diversity.

(4) The department shall:

(a) Identify maternal death cases;

(b) Obtain and review medical records and other relevant data using best practices for case reviews; (c) Consult, as appropriate, with relevant experts to evaluate and interpret the records and data; (d) Consult, as appropriate, with family members and other affected or involved persons to collect additional relevant information; (e) Convene the committee at least annually and provide committee members with the available information necessary to fully review each case; and (f) Deliver an annual report of the committee's findings and recommendations to the legislature and make these findings and recommendations available to health care providers, health care facilities, and the general public.

(5) The committee shall:

(a) Review medical records and other data obtained by the department for each case; (b) Make determinations regarding the preventability of maternal deaths; and (c) Develop recommendations for the prevention of maternal deaths.

History.

I.C., § 39-9603, as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

§ 39-9604. Proceedings, records, confidentiality, and immunity. [Null and void, effective July 1, 2023.] — The purpose of the maternal mortality review committee is to gather data and information concerning maternal mortality, conduct thorough and unbiased critical analyses of the causes of maternal mortality, and recommend possible changes to health care delivery in this state to reduce or eliminate preventable maternal deaths. In order to collect the necessary data and information, to the fullest extent possible, the proceedings of the committee and the statements, records, and information created or made therein or gathered by the committee in furtherance of its duties shall be treated as confidential and privileged, and the committee and all participants shall be afforded all protections provided to other organizations and participants therein conducting peer review or other critical analyses under [sections 39-1392a through 39-1392f, Idaho Code](#), or other provisions of state or federal law. Nothing in this chapter shall affect the privileged and confidential nature of a health care organization's peer review records, activities, or actions.

History.

[I.C., § 39-9604](#), as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

§ 39-9605. Access to records. [Null and void, effective July 1, 2023.]

— Upon request of the department, all information relating to the incidence of maternal mortality under review shall be provided by health care providers, providers of social services, health care facilities, law enforcement agencies, coroners, medical examiners, emergency medical service personnel, providers of medical transport services, and any other political subdivision or agency of state government having information relevant to the performance of the committee's duties.

History.

I.C., § 39-9605, as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

§ 39-9606. Rulemaking. [Null and void, effective July 1, 2023.] — The department of health and welfare may promulgate rules pursuant to chapter 52, title 67, Idaho Code, necessary to administer this chapter.

History.

I.C., § 39-9606, as added by 2019, ch. 92, § 1, p. 336.

STATUTORY NOTES

Null and Void, effective July 1, 2023.

This section is null and void, effective July 1, 2023, pursuant to S.L. 2019, ch. 92, § 2.

Cross References.

Department of health and welfare, § 56-1001 et seq.

Title 40
HIGHWAYS AND BRIDGES

Chapter

- Chapter 1. Definitions, §§ 40-101 — 40-128.
- Chapter 2. General Provisions, §§ 40-201 — 40-210.
- Chapter 3. Idaho Transportation Board, §§ 40-301 — 40-322.
- Chapter 4. Idaho Turnpike Authority, §§ 40-401 — 40-414.
- Chapter 5. Idaho Transportation Department, §§ 40-501 — 40-528.
- Chapter 6. County Commissioners And Highway Officers, §§ 40-601 — 40-619.
- Chapter 7. Appropriations, §§ 40-701 — 40-721.
- Chapter 8. Taxes, §§ 40-801 — 40-827.
- Chapter 9. Contracts — Bids, §§ 40-901 — 40-914.
- Chapter 10. Warrants, §§ 40-1001 — 40-1007.
- Chapter 11. Bonds, §§ 40-1101 — 40-1107.
- Chapter 12. Bridges, §§ 40-1201 — 40-1208.
- Chapter 13. Highway Districts, §§ 40-1301 — 40-1337A.
- Chapter 14. Single County-Wide Highway Districts, §§ 40-1401 — 40-1418.
- Chapter 15. Consolidation of Highway Districts, §§ 40-1501 — 40-1519.
- Chapter 16. Detachment or Annexation of Territory, §§ 40-1601 — 40-1631.
- Chapter 17. County Highway Reorganization, §§ 40-1701 — 40-1714.
- Chapter 18. Dissolution of Highway Districts, §§ 40-1801 — 40-1822.
- Chapter 19. Beautification of Highways, §§ 40-1901 — 40-1926.
- Chapter 20. Highway Relocation Assistance, §§ 40-2001 — 40-2013.
- Chapter 21. Regional Public Transportation Authority, §§ 40-2101 — 40-2114.
- Chapter 22. Detachment of Territory by Petition and Organization of New District, §§ 40-2201 — 40-2213.
- Chapter 23. Miscellaneous Provisions, §§ 40-2301 — 40-2324.
- Chapter 24. Local Highway Technical Assistance Council, §§ 40-2401 — 40-2405.
- Chapter 25. State Highway Contractors License Tax. [Repealed.]
- Chapter 26. Idaho Turnpike Control. [Repealed.]
- Chapter 27. County Local Option Secondary Highway Reorganization Act. [Repealed.]
- Chapter 28. Beautification of State Highways. [Repealed.]
- Chapter 29. Highway Relocation Assistance. [Repealed.]
- Chapter 30. County Wide Highway Districts. [Repealed.]

Chapter 1

DEFINITIONS

Sec.

40-101. Definitions.

40-102. Definitions — A.

40-103. Definitions — B.

40-104. Definitions — C.

40-105. Definitions — D.

40-106. Definitions — E.

40-107. Definitions — F.

40-108. Definitions — G.

40-109. Definitions — H.

40-110. Definitions — I.

40-111. Definitions — J.

40-112. [Reserved.]

40-113. Definitions — L.

40-114. Definitions — M.

40-115. [Reserved.]

40-116. Definitions — O.

40-117. Definitions — P.

40-118. [Reserved.]

40-119. Definitions — R.

40-120. Definitions — S.

40-121. Definitions — T.

40-122. Definitions — U.

40-123. Definitions — V.

40-124. Definitions — W.

40-125 — 40-127. [Reserved.]

40-128 — 40-146. [Repealed.]

§ 40-101. Definitions. — Words and phrases as used in this title are defined in sections 40-102 through 40-127, Idaho Code.

History.

I.C., § 40-101, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-101, which comprised R.S., § 850; reen. R.C. & C.L. § 874; C.S., § 1302; I.C.A., § 39-100, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

§ 40-102. Definitions — A. —

(1)(a) “Access easement” also commonly and sometimes legally referred to as a “deeded access” means a property right running with the land and appurtenant thereto for purposes of vehicular ingress and egress at a designated location from private property to the public highway or public right-of-way created by a written document, contract or deed by exception between the state or any political subdivision of the state of Idaho and the landowner. If the easement does not specify the type of use which may be made of the easement, for example, farm access, heavy industrial, etc., the easement is not limited to any type(s) of access.

(b) If the governmental entity with jurisdiction over the road that the property has a “deeded access” to denies the property owner the right to use the easement, the denial shall constitute a taking of the access right for which just compensation shall be owed.

(2) “Activities, commercial or industrial.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#))

(3) “Advertising business, outdoor.” (See “Outdoor advertising business,” [section 40-116, Idaho Code](#))

(4) “Advertising display” means advertising structures and signs.

(5) “Advertising structure(s)” or “structure(s)” or “sign(s)” means any thing designed, intended or used to advertise or inform. “Advertising structure” or “sign” does not include:

(a) Official notices issued by any court or public body or officer.

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice.

(c) Directional, warning or information structures required by or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures.

(d) An official or public structure erected near a city or county, and within its territorial or zoning jurisdiction, which contains the name of the city or county, provided the same is maintained wholly at public expense. Where a city has been bypassed, but remains within five (5) miles of an interstate highway or primary freeway, the Idaho transportation board, in its discretion, may grant the city the right to erect and maintain a billboard displaying the name of the city at a location not to exceed one (1) mile from an interchange primarily serving that city. Billboards erected must be at locations consistent with department regulations and safety standards.

(6) “Agency,” as applied to highway relocation assistance as provided by chapter 20, title 40, Idaho Code, means any subdivision or entity of state or local government in the state of Idaho authorized by law to engage in any highway program or perform any highway project in which the acquisition of real property may result in the displacement of any person.

(7) “Alternate technical concept (ATC)” means an alternative to the base technical concept that promotes innovation and is equal or better in quality or effect, as determined by the department in its sole discretion.

(8) “Areas, commercial or industrial, unzoned.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#))

(9) “Areas, urban.” (See “Urban areas,” [section 40-122, Idaho Code](#))

(10) “Automobile graveyard” means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(11) “Average annual net earnings,” for the purposes of [section 40-2004, Idaho Code](#), means one-half (½) of any net earnings of the business or farm operations, before federal, state and local income taxes, during the two (2) taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project, or during any other period as the agency determines to be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents

during the two (2) year period, or any other period as determined by the agency.

History.

I.C., § 40-102, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 1, p. 777; am. 2012, ch. 323, § 1, p. 882.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-102, which comprised R.C., § 2874a, as added by 1911, ch. 60, § 3, p. 167; reen. C.L., § 874a; C.S. § 1303; I.C.A., § 39-102, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

Amendments.

The 2010 amendment, by ch. 293, added subsection (6) and redesignated the subsequent subsections accordingly.

The 2012 amendment, by ch. 323, added subsection (1) and renumbered the subsequent subsections accordingly.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

Section 2 of S.L. 2012, ch. 323 declared an emergency. Approved April 5, 2012.

RESEARCH REFERENCES

ALR. — **May Easement or Right of Way Be Appurtenant Where Servient Tenement Is Not Adjacent to Dominant.** 15 A.L.R.7th 1.

§ 40-103. Definitions — B. — (1) “Base technical concept” means the project specific concepts and technical information provided in the request for proposals upon which design-build firms will develop their technical and price proposals.

(2) “Best value selection” means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

(3) “Board” means the Idaho transportation board.

(4) “Business” means any lawful activity, excepting a farm operation, conducted primarily for the purchase, resale, lease and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities, or other personal property; for the sale of services to the public; or solely for the purpose of [section 40-2004\(1\), Idaho Code](#), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not displays are located on the premises on which any of the activities are conducted.

(5) “Business entity” means a corporation, professional corporation, limited liability company, professional limited liability company, general partnership, limited partnership, limited liability partnership, professional limited liability partnership or any other form of business except a sole proprietorship.

History.

[I.C., § 40-103](#), as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 2, p. 777.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

The following sections comprising part of former chapter 1 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-103. R.S., § 851; am. 1893, p. 12, § 1, reen. 1899, p. 168, § 2; reen. R.C. & C.L., § 875; C.S. § 1304; I.C.A., § 39-103.

40-104. R.S., § 852; reen. R.C. & C.L., § 876; C.S., § 1305; I.C.A., § 39-104; am. 1963, ch. 6, § 1, p. 17; am. 1963, ch. 267, § 1, p. 680.

40-105. R.S., § 853; reen. R.C. & C.L., § 877; C.S., § 1306; I.C.A., § 39-105.

40-106. 1951, ch. 93, § 1, p. 165.

40-107. 1951, ch. 93, § 2, p. 165; 1966 (2nd E.S.), ch. 13, § 1, p. 20.

40-108. 1951, ch. 93, § 3, p. 165.

40-109. 1951, ch. 93, § 4, p. 165; am. 1963, ch. 294, § 1, p. 774.

40-110. 1951, ch. 93, § 5, p. 165.

40-111. **I.C., § 40-111**, as added by 1974, ch. 12, § 2, p. 61; am. 1982, ch. 95, § 132, p. 185.

40-112. 1951, ch. 93, § 7, p. 165; am. 1955, ch. 260, § 7, p. 623; am. 1974, ch. 12, § 3, p. 61.

40-113. 1951, ch. 93, § 8, p. 165; am. 1974, ch. 12, § 4, p. 61.

40-114. 1951, ch. 93, § 9, p. 165; am. 1974, ch. 12, § 5, p. 61.

40-115. 1951, ch. 93, § 10, p. 165; am. 1971, ch. 136, § 25, p. 522.

40-116. 1951, ch. 93, § 11, p. 165.

40-117. 1951, ch. 93, § 12, p. 165; am. 1971, ch. 190, § 1, p. 873; am. 1974, ch. 12, § 6, p. 61; am. 1974, ch. 161, § 1, p. 1395; 1976, ch. 358, § 1, p. 1175; am. 1980, ch. 247, § 40, p. 582.

40-118. 1951, ch. 93, § 13, p. 165; am. 1974, ch. 12, § 7, p. 61.

40-119. 1951, ch. 93, § 14, p. 165; am. 1974, ch. 12, § 8, p. 61.

40-120. 1951, ch. 93, § 15; am. 1955, ch. 260, § 2, p. 263; am. 1957, ch. 227, § 1, p. 520; am. 1959, ch. 251, § 1, p. 532; am. 1961, ch. 264, § 1, p.

465; am. 1974, ch. 12, § 9, p. 61; am. 1978, ch. 282, § 1, p. 684; am. 1981, ch. 119, § 1, p. 203; am. 1982, ch. 95, § 133, p. 185; am. 1982, ch. 306, § 1, p. 768.

40-121. 1951, ch. 93, § 16, p. 165; am. 1955, ch. 260, § 3, p. 623; am. 1974, ch. 12, § 10, p. 61; am. 1983, ch. 234, § 1, p. 637.

40-122. 1951, ch. 93, § 17, p. 165.

40-123. 1951, ch. 93, § 18, p. 165; am. 1974, ch. 12, § 11, p. 61.

40-124. **I.C., § 40-124**, as added by 1974, ch. 12, § 12, p. 61; am. 1982, ch. 95, § 134, p. 185. A former § 40-124 which comprised 1951, ch. 93, § 19, p. 165 was repealed by S.L. 1974, ch. 12, § 1, p. 61.

40-125. 1951, ch. 93, § 20, p. 165; am. 1971, ch. 136, § 26, p. 522; am. 1974, ch. 12, § 13, p. 61.

40-126. 1951, ch. 93, § 21, p. 165; am. 1974, ch. 12, § 14, p. 61.

40-127. 1951, ch. 93, § 22, p. 165.

Amendments.

The 2010 amendment, by ch. 293, added subsections (1), (2), and (5), and redesignated the other subsections accordingly.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

CASE NOTES

Cited **Burruv v. Stanger**, 114 Idaho 50, 753 P.2d 261 (Ct. App. 1988).

§ 40-104. Definitions — C. — (1) “City system” means all public highways within the corporate limits of a city, with a functioning street department, except those highways which are under federal control, a part of the state highway system, part of a highway district system or an extension of a rural major collector route as specified in [section 40-607, Idaho Code](#).

(2) “Commercial activities.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#)) (3) “Commercial areas, unzoned.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#)) (4) “Commissioners” means the board of county commissioners of a county of this state.

(5) “Construction manager/general contractor firm” means a business entity with which the department has contracted to provide services prior to the final design phase and provide for the construction of the project during the construction phase.

(6) “Construction manager/general contractor project” means a project where the department retains a consultant or has on staff an Idaho licensed professional engineer to develop the design and also hires a construction manager/general contractor firm to provide services prior to the final design. If a guaranteed maximum price is negotiated successfully, the construction manager/general contractor firm also provides for construction of the project.

(7) “Consultant” means an individual or business entity possessing the qualifications to provide licensed architectural, licensed engineering, or licensed land surveying services or possessing specialized credentials and qualifications.

(8) “Controlled-access facility” means a highway especially designed for through traffic to which owners or occupants of abutting land have no right or easement or only a controlled right or easement of access by reason of the fact that their property abuts upon the controlled-access facility. These highways may be freeways open to use by all customary forms of highway

traffic, or they may be parkways from which trucks, buses and other commercial vehicles shall be excluded.

(9) “County highway system” or “county secondary highways” mean all public highways in a county except those included within the state highway system, those under another state agency, those included within city highway systems of incorporated cities, those included within a highway district highway system, and those under federal control.

History.

[I.C., § 40-104](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 1, p. 803; am. 1994, ch. 324, § 1, p. 1039; am. 2010, ch. 293, § 3, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-104 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsections (5) through (7) and redesignated the other subsections accordingly.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

CASE NOTES

[County highway system.](#)

[Jurisdiction over streets.](#)

County Highway System.

All public roadways not included in the federal highway system the state highway system, or a city street system, are necessarily a part of the county

highway system. *Lido Van & Storage, Inc. v. Kuck*, 110 Idaho 939, 719 P.2d 1199 (1986).

Because five years passed with no public use or maintenance on a gravel boundary road, the road ceased to be defined as a public road; the abandonment did not require any formal action by county commissioners. *John W. Brown Props. v. Blaine County*, 138 Idaho 171, 59 P.3d 976 (2002).

Jurisdiction Over Streets.

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Cited *French v. Sorensen*, 113 Idaho 950, 751 P.2d 98 (1988); *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002).

Decisions Under Prior Law

Acceptance and use of highway.

City streets.

Judicial notice.

Acceptance and Use of Highway.

Where in an action by plaintiff residents of an unincorporated area of a county to have certain roads declared public highways and to require the county to maintain the roads, the evidence showed that the county had regularly maintained the roads for approximately nine years, that the roads had been extensively used by the general public, and that the sales of several lots within the area had been made with particular reliance upon several written representations made by various members of the board of county commissioners that the roads would be maintained by the county, the trial court erred in granting summary judgment for the county because a substantial fact issue existed as to whether the county had accepted the roads. *Pugmire v. Johnson*, 102 Idaho 882, 643 P.2d 832 (1982).

City Streets.

A street within a city was a highway within the meaning of the law imposing a tax upon gasoline, and the municipality could not escape its liability for such tax on the ground that it did not use the highway of the state, since the municipality receives benefits by reason of the state highway surrounding it. *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

Judicial Notice.

The court would take judicial notice of the order of board of highway directors (now transportation board) fixing and designating 35 miles per hour as the reasonable, safe, prima facie speed limit on certain portion of U.S. Highway 30, and of the fact that the section of the highway to which it relates is a part of the “state highway system.” *State v. Wendler*, 83 Idaho 213, 360 P.2d 697 (1961).

§ 40-105. Definitions — D. — (1) “Department” means the Idaho transportation department.

(2) “Design-build contract” means a single contract between the department and a design-build firm to furnish the architectural or engineering and related design services, labor, material, supplies, equipment, and construction services for the highway project.

(3) “Design-build firm” means a sole proprietorship, partnership, limited liability partnership, joint venture, corporation, any type of limited liability company, professional corporation or legal entity qualified to design and build highway projects.

(4) “Design-build project” means a project for which both the design and construction of the project are procured by the department in a single contract with a design-build firm capable of providing the necessary design services and construction.

(5) “Designer” means a duly licensed individual or business entity who performs the engineering design and related design work for a design-build firm.

(6) “Designer qualifications” means the criteria used to evaluate the design-build firm’s designer(s).

(7) “Director” means the director of the Idaho transportation department.

(8) “Displaced person” means any individual, family, business or farm operation which moves from real property or moves personal property from real property acquired for a program or project of a state or local agency, in whole or in part, or as the result of a written order of an acquiring agency to vacate real property for a program or project of a state or local agency, and, solely for the purposes of [section 40-2004, Idaho Code](#), as a result of a written order of an acquiring agency to vacate other real property, on which a person conducts a business or farm operation, for a program or project of any state or local agency.

(9) “Draw” means making a cash demand on the proceeds of transportation bonds or notes issued by the Idaho housing and finance

association as it pertains to [section 40-718, Idaho Code](#).

(10) “Dump” means any place or area, not operated as a business, where junk is deposited, stored or kept.

History.

[I.C., § 40-105](#), as added by 1985, ch. 253, § 2, p. 586; am. 2005, ch. 378, § 1, p. 1217; am. 2010, ch. 293, § 4, p. 777.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Idaho transportation department, § 40-501 et seq.

Prior Laws.

Former § 40-105 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsections (2) through (6) and redesignated the other subsections accordingly.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-106. Definitions — E. — (1) “Erect” means to construct, build, raise, assemble, place, affix, create, paint, draw or in any other way bring into being or establish, but does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of a sign. With respect to certain easements held by the state restricting the erection of structures on certain lands, the state of Idaho and the department shall be deemed to have waived such restrictions with regard only to each sign erected prior to October 22, 1965.

(2) “Expenditure” means the awarding of a contract, franchise or authority to another by a district, and every manner and means whereby the highway district disburses district funds or obligates itself to disburse district funds. “Expenditure” does not include disbursement of district funds to regularly employed highway district employees, officials or agents, or for the performance of personal services to the district, or for the acquisition of personal property through a contract that has been competitively bid by the state of Idaho, one of its subdivisions, or an agency of the federal government.

(3) “Expense of the public” means the expenditure of funds for roadway maintenance by any governmental agency, including funds expended by any agency of the federal government, so long as the agency allows public access over the roadway on which the funds were expended and such roadway is not located on federal or state-owned land.

History.

I.C., § 40-106, as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 412, § 1, p. 1505; am. 2003, ch. 67, § 1, p. 226.

STATUTORY NOTES

Prior Laws.

Former § 40-106 was repealed. See Prior Laws, § 40-103.

§ 40-107. Definitions — F. — (1) “Facilities” mean tracks, pipes, mains, conduits, cables, wires, towers, poles, equipment and appliances.

(2) “Family” means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(3) “Farm operation” means any activity conducted primarily for the production of agricultural products or commodities, including timber, for sale and home use, and producing agricultural products or commodities in sufficient quantity to contribute materially to the operator’s support.

(4) “Feeder highway” means any highway which, in the opinion of the transportation board, is needed to create or facilitate access to a turnpike project upon which a toll is charged for transit.

(5) “Federal land rights-of-way” mean rights-of-way on federal land within the context of revised statute 2477, codified as [43 U.S.C. 932](#), and other federal access grants and shall be considered to be any road, trail, access or way upon which construction has been carried out to the standard in which public rights-of-way were built within historic context. These rights-of-way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads and all other ways.

(6) “Final design” means any design activities following preliminary design and includes the preparation of final construction plans and detailed specifications for the performance of construction work.

(7) “Fixed price-best design” means a selection process in which the contract price is established by the department and stated in the request for proposals. Design solutions and other qualitative factors are evaluated and rated, with award going to the design-build firm offering the best qualitative proposal for the established price.

History.

[I.C., § 40-107](#), as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 142, § 2, p. 375; am. 2010, ch. 293, § 5, p. 777.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-107 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsections (6) and (7).

Legislative Intent.

Section 1 of S.L. 1993, ch. 142 read: “The State of Idaho recognizes that existing federal land rights of way are extremely important to all of Idaho’s citizens. Two-thirds of Idaho’s land is under control of the federal government and access to such federal lands is integral to public use. The Idaho State legislature recognizes the necessity for establishing a procedure for identifying and confirming the existence of previously established federal rights of way, to protect those rights previously granted to and vested in, the citizens of Idaho.”

Federal References.

Revised statutes 2477, referred to in subsection (5) and codified as [43 U.S.C. 932](#), was repealed by [P.L. 94-579](#), effective October 21, 1976.

Effective Dates.

Section 4 of S.L. 1993, ch. 142 declared an emergency. Approved March 25, 1993.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-108. Definitions — G. — (1) “GARVEE” means grant anticipation revenue vehicle, a debt financing instrument which enables states to finance state transportation infrastructure projects and to pay debt service and other bond-related expenses with future federal-aid highway apportionments.

(2) “Guaranteed maximum price (GMP)” means the total maximum price that includes all reimbursable costs and fees, except for material changes in the scope of work, for completion of a construction manager/general contractor contract that is provided by the selected contractor and accepted by the department.

History.

I.C., § 40-108, as added by 2005, ch. 378, § 2, p. 1217; am. 2010, ch. 293, § 6, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-108 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsection (2).

Compiler’s Notes.

For more on the GARVEE transportation program, see <http://www.itd.idaho.gov/Projects/garvee/default.asp>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-109. Definitions — H. — (1) “Highway district system” means all public highways within each highway district, except those included within the state highway system, those under another state agency, those included within city highway systems of incorporated cities with a functioning street department, and those under federal control.

(2) “Highway system, county.” (See “County highway system,” [section 40-104, Idaho Code](#)) (3) “Highway system, state.” (See “State highway system,” [section 40-120, Idaho Code](#)) (4) “Highway users’ fund bonds” mean those bonds issued for and on behalf of dissolved city highway systems or highway districts, and the funds out of which those bonds are repayable shall be the moneys received or provided by [section 40-707, Idaho Code](#).

(5) “Highways” mean roads, streets, alleys and bridges laid out or established for the public or dedicated or abandoned to the public. Highways shall include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls, bridges, tunnels, grade separation structures, roadside improvements, adjacent lands or interests lawfully acquired, pedestrian facilities, and any other structures, works or fixtures incidental to the preservation or improvement of the highways. Roads laid out and recorded as highways, by order of a board of commissioners, and all roads used as such for a period of five (5) years, provided they shall have been worked and kept up at the expense of the public, or located and recorded by order of a board of commissioners, are highways.

History.

[I.C., § 40-109](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 2, p. 803; am. 1988, ch. 184, § 1, p. 322; am. 1994, ch. 324, § 2, p. 1039.

STATUTORY NOTES

Prior Laws.

Former § 40-109 was repealed. See Prior Laws, § 40-103.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1988, ch. 184 declared an emergency. Approved March 26, 1988.

CASE NOTES

Acceptance and use as highway.

Declaration of public road.

Escape ramps.

Highway district system.

Acceptance and Use as Highway.

Affidavits of former property owners showing that the public frequently and continuously used the road and that county trucks and other road equipment were used to repair and maintain the road over a 13-year span were sufficient to sustain a determination that the road had become a public highway. *Blaine County v. Bryson*, 109 Idaho 123, 705 P.2d 1078 (Ct. App. 1985).

Declaration of Public Road.

County had not abandoned a road by formal action, pursuant to § 40-501, even though the road was not identified as part of the county road system pursuant to this section, because an action where the city rejected a claim to maintain the road did not amount to a finding, as required by the formal abandonment statute, § 40-604(4), that the abandonment of the road was in the public interest. *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Escape Ramps.

Based upon the definition of "highways" in this section, runaway escape ramps are, as a matter of law, part of the highway district road system, being roadside improvements, adjacent lands or interests lawfully acquired,

pedestrian facilities, and any other structures, works or fixtures incidental to the preservation or improvement of the highways and under § 40-1310 and § 31-805, the highway district had a duty to maintain those runaway escape ramps as part of the highway district road system. *Freeman v. Juker*, 119 Idaho 555, 808 P.2d 1300 (1991).

Highway District System.

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Cited *French v. Sorensen*, 113 Idaho 950, 751 P.2d 98 (1988); *Burrap v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App. 1988); *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000); *E. Side Highway Dist. v. Delavan*, — Idaho —, — P.3d —, 2019 Ida. LEXIS 222 (Dec. 11, 2019).

Decisions Under Prior Law

In general.

Abandonment.

Acceptance and use as highway.

Acceptance of congressional grant.

Bridges.

Declaration of public road.

Dedication.

Maintenance of highways.

Railroads.

Streams.

Unauthorized dedication.

In General.

In an action to compel the removal of a sign from a highway, the project involved was not limited to the actual roadway or traveled portion of the highway, but encompassed all the area within the limits of the right of way. *State ex rel. Burns v. Kelly*, 89 Idaho 139, 403 P.2d 566 (1965).

Abandonment.

Mere nonuser of a portion of the total width of the highway over a period of years does not constitute an abandonment; therefore defendants were estopped from claiming right and title due to occupation and use of land upon which obstruction stood without interruption for 30 years in spite of the fact that the area in dispute had not been used for highway purposes or kept up or maintained at public expense. *Rich v. Burdick*, 83 Idaho 335, 362 P.2d 1088 (1961).

Acceptance and Use as Highway.

In an action to establish a public highway, the evidence sustained a judgment for the defendant on the ground that there were no positive acts on the part of the public authorities clearly manifesting an intention to accept a trail as a public highway, as required by federal law, and the use of the trail by the public was merely casual and was insufficient to establish the highway. *Kirk v. Schultz*, 63 Idaho 278, 119 P.2d 266 (1941).

Acceptance of Congressional Grant.

Generally, in order to constitute an acceptance of the congressional grant of a right of way for public highway across public lands, there had to be either use by the public for such a period of time and under such conditions as to establish a highway under the state law, or there had to be some positive act or acts on the part of the proper public authorities clearly manifesting an intention to accept the grant with respect to the particular highway. *Kirk v. Schultz*, 63 Idaho 278, 119 P.2d 266 (1941).

Bridges.

Bridges were highways. *Sandpoint v. Doyle*, 14 Idaho 749, 95 P. 945 (1908); *Bonneville County v. Bingham County*, 24 Idaho 1, 132 P. 431 (1913); *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913); *Good Road Dist. No. 2 v. Washington County*, 27 Idaho 732, 152 P. 183 (1915).

Bridges were part of state highway system, and the legislature could authorize highway department (now Idaho transportation department) to purchase or build without contravening any constitutional inhibition. A purchase of a bridge was not a lending or pledging of the credit of the state to a private person or corporation. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Declaration of Public Road.

Declaration that road crossing landowner's property was no more than a statement of the county's intent to treat the road as public and did not amount to a taking of property. *Evers v. County of Custer*, 745 F.2d 1196 (9th Cir. 1984).

Dedication.

Where a highway was dedicated to the public use as early as 1879, its width and boundary lines were properly established and are as shown by the surveys; therefore, the state was entitled to improve and expand the use of the highway to its entire width to meet increasing traffic demands. *Rich v. Burdick*, 83 Idaho 335, 362 P.2d 1088 (1961).

Maintenance of Highways.

Once thoroughfare was dedicated to the public, it became a highway; and while under former law regarding improvement of highways, it would appear that county must assume its maintenance since in counties with highway districts former law transferred the powers and duties over highways from the county commissioners to the highway board of the highway district, highway district had the duty to accept thoroughfare into its highway system and to begin providing maintenance; however, the decision to maintain it as a gravel road or to bring it up to the district's minimum standards of highway construction rested within the discretion of the highway district. *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

Railroads.

Railroads were not highways and were not liable under a tax statute for tax on gasoline used in gasoline engines on its tracks and rights of way. *Oregon S.L.R.R. v. Pfof*, 53 Idaho 559, 27 P.2d 877 (1933).

Streams.

Navigable streams were not highways within the meaning of R.S., 1887, § 850. *Grice v. Clearwater Timber Co.*, 20 Idaho 70, 117 P. 112 (1911).

Unauthorized Dedication.

Private land owner had no power to dedicate to public any portion of railroad's right of way. *Palmer v. Northern Pac. R.R.*, 11 Idaho 583, 83 P. 947 (1905).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 1 et seq.

C.J.S. — 39A C.J.S., Highways, § 27 et seq.

§ 40-110. Definitions — I. — (1) “Improved highway” means a graded and drained earth traveled way or better, to include one graded and graveled or with paved surface, and a graded and drained earth highway means a traveled way of natural earth, aligned and graded to permit reasonably convenient use by motor vehicles, and drained by a longitudinal and transverse system, natural or artificial, sufficient to prevent serious impairment of the highway by surface water.

(2) “Individual” means a person who is not a member of a family.

(3) “Industrial activities.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#)) (4) “Industrial areas, unzoned.” (See “Unzoned commercial or industrial areas,” [section 40-122, Idaho Code](#)) (5) “Information center” means any area or site established and maintained at a safety rest area on an interstate or primary highway by or under the supervision or control of the department, where panels for the display of advertising and informational signs may be erected and maintained.

(6) “Interchange area” means the commencing or ending at the beginning of pavement widening at the exit or entrance to the main traveled way of an interstate, primary freeway, or turnpike project.

(7) “Interstate system” or “interstate highway” means any portion of the national system of interstate and defense highways located within the state, as officially designated or as may be hereafter so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, “Highways”.

History.

[I.C., § 40-110](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-110 was repealed. See Prior Laws, § 40-103.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 40-111. Definitions — J. — (1) “Junk” means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste; junk, dismantled, or wrecked automobiles, or their parts; iron, steel and other scrap ferrous or nonferrous material.

(2) “Junkyard” means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

History.

I.C., § 40-111, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-111 was repealed. See Prior Laws, § 40-103.

Idaho Code § 40-112

§ 40-112. Definitions — K. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-112 was repealed. See Prior Laws, § 40-103.

§ 40-113. Definitions — L. — (1) “Lawfully maintained” means a sign maintained on private land in accordance with state law and with the consent or acquiescence of the owner, or his agent, of the property upon which the sign is located.

(2) “Local highway technical assistance council” means the public agency created in chapter 24, title 40, Idaho Code.

(3) “Local highway jurisdiction” means a county with jurisdiction over a highway system, a city with jurisdiction over a highway system, or a highway district.

(4) “Lowest price technically acceptable selection” means a type of process for selection of a design-build firm in which the department identifies evaluation factors that establish the minimum requirements of acceptability. Proposals are evaluated for acceptability based on qualitative factors, not cost or price, but are not ranked. The contract award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for qualitative factors.

History.

I.C., § 40-113, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 280, § 1, p. 867; am. 2010, ch. 293, § 7, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-113 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsection (4).

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-114. Definitions — M. — (1) “Main traveled way” means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(2) “Maintain” or “place” means to allow to exist, subject to the provisions of chapter 19, title 40, Idaho Code.

(3) “Maintenance” means to preserve from failure or decline, or repair, refurbish, repaint or otherwise keep an existing highway or public right-of-way in a suitable state for use including, without limitation, snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signage.

(4) “Mortgage” means a class of liens, including deeds of trust, as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state of Idaho, together with the credit instruments, if any, secured by it.

History.

I.C., § 40-114, as added by 1985, ch. 253, § 2, p. 586; am. 2013, ch. 239, § 2, p. 560.

STATUTORY NOTES

Prior Laws.

Former § 40-114 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2013 amendment, by ch. 239, substituted “public right-of-way in a suitable state for use including, without limitation, snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signage” for “structure in a suitable state for use” in subsection (3).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: “Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as

amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way.”

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

Idaho Code § 40-115

§ 40-115. Definitions — N. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-115 was repealed. See Prior Laws, § 40-103.

§ 40-116. Definitions — O. — (1) “Organizational conflict of interest” means that, because of other activities or relationships with other persons or entities, a person or entity is unable or potentially unable to render impartial assistance or advice to the department or the person’s or entity’s objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage.

(2) “Outdoor advertising business” means the business or occupation of placing, erecting, constructing or maintaining advertising structures or signs. The term does not include the placing, erecting, constructing or maintaining of advertising displays exclusively pertaining to the business of the person placing the advertising display, but does include a person whenever he personally or through employees places advertising displays containing advertising which does not pertain exclusively to his own business.

(3) “Owner” means all persons and all political subdivisions of the state having any title or interest in any property, rights, easements and interests authorized to be acquired by chapter 3, title 40, Idaho Code.

History.

I.C., § 40-116, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 8, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-116 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsection (1) and redesignated the subsequent subsections accordingly.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-117. Definitions — P. — (1) “Person” includes every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

(2) “Place.” (See “Maintain,” [section 40-114, Idaho Code](#))

(3) “Preliminary design,” as used in [section 40-904, Idaho Code](#), means the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analyses, hydraulic analyses, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials and other work needed to establish parameters for the final design.

(4) “Price proposal” means the price submitted by a design-build firm to provide the required design and construction services described in the request for proposals or the price submitted by a construction manager/general contractor firm to provide the required construction services described in the request for proposal.

(5) “Primary system” or “primary highway” means any portion of the highways of the state, as officially designated, or as may hereafter be so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, “Highways.”

(6) “Public highway agency” means the state transportation department, any city, county, highway district or other political subdivision of the state with jurisdiction over public highway systems and public rights-of-way.

(7) “Public highways” means all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (Also see “Highways,” [section 40-109, Idaho Code](#))

(8) “Public land survey corner” means any point actually established and monumented in an original survey or resurvey that determines the

boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the United States general land office and the United States department of interior, bureau of land management.

(9) “Public right-of-way” means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain, but may expend funds for the maintenance of, said public right-of-way or post traffic signs for vehicular traffic on said public right-of-way. In addition, a public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, prescriptive use, or abandonment of a highway pursuant to [section 40-203, Idaho Code](#), but shall not include federal land rights-of-way, as provided in [section 40-204A, Idaho Code](#), that resulted from the creation of a facility for the transmission of water. Public rights-of-way shall not be considered improved highways for the apportionment of funds from the highway distribution account.

(10) “Public street” means a road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency.

(11) “Public transportation services” means, but is not limited to, fixed transit routes, scheduled or unscheduled transit services provided by motor vehicle, bus, rail, van, aerial tramway and other modes of public conveyance; paratransit service for the elderly and disabled; shuttle and commuter service between cities, counties, health care facilities, employment centers, educational institutions or park-and-ride locations; subscription van and car pooling services; transportation services unique to social service programs; and the management and administration thereof.

History.

[I.C., § 40-117](#), as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 412, § 2, p. 1505; am. 2000, ch. 252, § 1, p. 716; am. 2000, ch. 417, § 1, p. 1328; am. 2010, ch. 293, § 9, p. 777; am. 2011, ch. 136, § 1, p. 383.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-117 was repealed. See Prior Laws, § 40-103.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 252, § 1, substituted “right-of-way” for “right of way” throughout the section; in subsection (5), substituted “means” for “mean”; in subsection (6), substituted “, but may expend funds for the maintenance of, said public right-of-way or post traffic signs for vehicular traffic on said public right-of-way” for “said right of way for vehicular traffic”, and added the last two sentences.

The 2000 amendment, by ch. 417, § 1, substituted “right-of-way” for “right of way” throughout the section; in subsection (5), substituted “means” for “mean”; and added subsection (7).

The 2010 amendment, by ch. 293, added subsections (3) and (4) and redesignated the subsequent subsections accordingly.

The 2011 amendment, by ch. 136, added subsections (8) and (10) and redesignated the remaining subsections accordingly.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2000, ch. 252 declared an emergency. Approved April 12, 2000.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

CASE NOTES

Cited French v. Sorensen, 113 Idaho 950, 751 P.2d 98 (1988).

Idaho Code § 40-118

§ 40-118. Definitions — Q. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-118 was repealed. See Prior Laws, § 40-103.

§ 40-119. Definitions — R. — (1) “Reference point” means a special monumented point that does not occupy the same geographical position as the corner itself, and where the spatial relationship to the corner is known and recorded, and that serves to locate the corner.

(2) “Request for proposals (RFP)” means a document used to solicit proposals from design-build firms to design and construct a highway project or to solicit proposals from construction manager/general contractor firms to provide services prior to final design and then construct a highway project.

(3) “Request for qualifications (RFQ)” means a document issued by the department in the first step of a two-step selection process that describes the project in enough detail to let potential design-build firms determine if they wish to compete and forms the basis for developing a short-list of the most qualified design-build firms.

(4) “Responsive proposals” means proposals submitted by responsive proposers that comply with the request for proposals and all prescribed procurement procedures and requirements.

History.

I.C., § 40-119, as added by 2010, ch. 293, § 10, p. 777; am. 2011, ch. 136, § 2, p. 383.

STATUTORY NOTES

Prior Laws.

Former § 40-119 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2011 amendment, by ch. 136, added subsection (1) and redesignated the remaining subsections accordingly.

Compiler’s Notes.

The letters “RFP” and “RFQ” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-120. Definitions — S. — (1) “Safety rest area” means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for convenience of the traveling public.

(2) “Short-listing” means the narrowing of the field of potential design-build firms through the selection of the most qualified design-build firms who have responded to a request for qualifications.

(3) “Sign.” (See “Advertising structure,” [section 40-102, Idaho Code](#))

(4) “Single countywide highway district” means all public highways within the county, including those within all cities of the county, but excepting those within the state highway system and those under federal control.

(5) “State highway system” means the principal highway arteries in the state, including connecting arteries and extensions through cities, and includes roads to every county seat in the state.

(6) “State law” means a provision of the constitution or statutes of this state, or an ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this state pursuant to the constitution or statutes.

(7) “Stipend” means a monetary amount that may be paid to unsuccessful design-build firms who have submitted responsive proposals in response to an RFP. The purpose of a stipend is to encourage competition by offering to compensate responsive but unsuccessful design-build firms for a portion of the proposal development costs.

(8) “Street” means a thoroughfare, alley, highway or a right-of-way that may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency.

(9) “Structure.” (See “Advertising structure,” [section 40-102, Idaho Code](#))

(10) “System, city.” (See “City system,” [section 40-104, Idaho Code](#))

History.

I.C., § 40-120, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 11, p. 777; am. 2011, ch. 136, § 3, p. 383.

STATUTORY NOTES

Prior Laws.

Former § 40-120 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsections (2) and (7) and redesignated the other subsections accordingly.

The 2011 amendment, by ch. 136, added subsection (8) and redesignated the remaining subsections accordingly.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

CASE NOTES

State Highway System.

In a prosecution against Indian tribe member for leaving the scene of an accident and for aggravated driving under the influence, where the defendant challenged the state's jurisdiction over a section of U.S. Highway 95 that is within the boundaries of an Indian reservation, the trial court could have taken judicial notice of the "Official Highway Map" which the Idaho transportation department periodically issues and widely distributes for convenience of motorists; while these maps may not be conclusive on the subject of "principal" highways, they are reliable authority. *State v. Smith*, 124 Idaho 671, 862 P.2d 1093 (Ct. App. 1993).

§ 40-121. Definitions — T. — (1) “Technical proposal” means that portion of a design-build firm proposal that contains design solutions and other qualitative factors that are provided in response to a request for proposals.

(2) “Tourist related advertising sign” means any sign which advertises a specific public or private facility, accommodation or service, at a particular location or site, including: overnight lodging, a camp site, food service, recreational facility, tourist attraction, education or historical site or feature, automotive service, facility or garage.

(3) “Turnpike project” means any express highway or bridge at locations and between terminals as may be established by the board and constructed or to be constructed under the provisions of chapter 4, title 40, Idaho Code, and shall include all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and administration, storage and other buildings, which the board may deem necessary for the operation of a project, together with all property, rights, easements, and interests which may be acquired by the board for the construction or the operation of a project.

(4) “Turnpike revenue bonds” mean bonds of the transportation board authorized under the provisions of section 40-412, et seq., Idaho Code.

(5) “Two-step selection” means a procurement process in which the first step consists of short-listing based on statements of qualifications submitted in response to a request for qualifications and the second step consists of the submission of price and technical proposals in response to a request for proposals.

History.

I.C., § 40-121, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 12, p. 777.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-121 was repealed. See Prior Laws, § 40-103.

Amendments.

The 2010 amendment, by ch. 293, added subsections (1) and (5) and redesignated the other subsections accordingly.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-122. Definitions — U. — (1) “Unzoned commercial or industrial areas” mean those areas not zoned by state or local law, regulation or ordinance which are occupied by industrial or commercial activities, other than outdoor advertising signs, and the lands along the highway for a distance of six hundred (600) feet immediately abutting to the area of the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and shall be along or parallel to the edge of pavement of the highway.

“Commercial or industrial activities” mean those activities generally recognized as commercial or industrial by zoning authorities in the state, except that none of the following activities shall be considered commercial or industrial: (a) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

(b) Transient or temporary activities.

(c) Activities not visible from the main traveled way.

(d) Activities conducted in a building principally used as a residence.

(e) Railroad tracks and minor sidings.

(2) “Urban areas” mean any geographical area within the city limits of any incorporated city having a population of five thousand (5,000) or more inhabitants. Population numbers referred to shall be determined by the latest United States census.

(3) “Utility” means any publicly, privately or cooperatively owned utility.

History.

I.C., § 40-122, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-122 was repealed. See Prior Laws, § 40-103.

§ 40-123. Definitions — V. — (1) “Visible” means capable of being seen without visual aid by a person of normal visual acuity.

History.

I.C., § 40-123, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-123 was repealed. See Prior Laws, § 40-103.

Compiler’s Notes.

This section was enacted with a subsection (1), but no subsection (2).

§ 40-124. Definitions — W. — “Witness corner” means a monumented point on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

History.

I.C., § 40-124, as added by 2011, ch. 136, § 4, p. 383.

STATUTORY NOTES

Prior Laws.

Former § 40-124 was repealed. See Prior Laws, § 40-103.

Idaho Code § 40-125

§ 40-125. Definitions — X. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-125 was repealed. See Prior Laws, § 40-103.

Idaho Code § 40-126

§ 40-126. Definitions — Y. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-126 was repealed. See Prior Laws, § 40-103.

Idaho Code § 40-127

§ 40-127. Definitions — Z. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former § 40-127 was repealed. See Prior Laws, § 40-103.

§ 40-128 — 40-143. Highway administrative act of 1951 — Traffic safety commission — Creation, powers and duties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections comprising part of former chapter 1 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-128. 1951, ch. 93, § 23, p. 165; am. 1974, ch. 12, § 15, p. 61.

40-129. 1951, ch. 93, § 24, p. 165; am. 1974, ch. 12, § 16, p. 61.

40-130. 1951, ch. 93, § 25, p. 165; am. 1974, ch. 12, § 17, p. 61.

40-131. 1951, ch. 93, § 26, p. 165; am. 1967, ch. 238, § 1, p. 697; am. 1970, ch. 52, § 1, p. 117.

40-132. 1951, ch. 93, § 27, p. 165; am. 1953, ch. 55, § 1, p. 76.

40-133. 1951, ch. 93, § 28, p. 165; am. 1965, ch. 131, § 1, p. 259.

40-134. 1951, ch. 93, § 29, p. 165; am. 1974, ch. 12, § 18, p. 61.

40-135. 1951, ch. 93, § 30, p. 165.

40-136. 1951, ch. 93, § 31, p. 165.

40-137. 1951, ch. 93, § 32, p. 165; am. 1971, ch. 352, § 1, p. 1344; am. 1974, ch. 12, § 19, p. 61; am. 1979, ch. 287, § 1, p. 732.

40-138. 1951, ch. 93, § 33, p. 165.

40-139. 1951, ch. 93, § 34, p. 165; am. 1974, ch. 12, § 20, p. 61.

40-140. 1951, ch. 93, § 37, p. 165.

40-141. 1951, ch. 93, § 38, p. 165.

40-142. **I.C., § 40-142**, as added by 1974, ch. 12, § 21, p. 61; am. 1976, ch. 162, § 1, p. 590; am. 1977, ch. 63, § 1, p. 120.

40-143. **I.C., § 40-143**, as added by 1974, ch. 12, § 22, p. 61; am. 1976, ch. 162, § 2, p. 590.

§ 40-144, 40-145. Department of highways supervisory employees, designation — Approval by state board of examiners. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1963, ch. 41, §§ 3 and 4, were repealed by S.L. 1969, ch. 176; § 10.

§ 40-146. Joint operation of ports of entry. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-146**, as added by 1983, ch. 152, § 1, p. 406, was repealed by S.L. 1985, ch. 253.

Chapter 2

GENERAL PROVISIONS

Sec.

40-201. State highway, county highway, highway districts and city highway systems established.

40-202. Designation of highways and public rights-of-way.

40-203. Abandonment and vacation of county and highway district system highways or public rights-of-way.

40-203A. Validation of county or highway district system highway or public right-of-way.

40-203B. Abandonment or assuming control of a highway.

40-204. Assent to federal acts.

40-204A. Federal land rights-of-way.

40-205. Saving clause for acts and suits in process of being carried out.

40-206. Publication of notices.

40-207. Violations — Penalties.

40-208. Judicial review.

40-209. Highway right-of-way plats.

40-210. Legislative intent — Utility facilities — Coordinated relocation policies — Definitions.

§ 40-201. State highway, county highway, highway districts and city highway systems established. — There shall be a system of state highways in the state, a system of county highways in each county, a system of highways in each highway district, and a system of highways in each city, except as otherwise provided. The improvement of highways and highway systems is hereby declared to be the established and permanent policy of the state of Idaho, and the duty is hereby imposed upon the state, and all counties, cities, and highway districts in the state, to improve and maintain the highways within their respective jurisdiction as hereinafter defined, within the limits of the funds available.

History.

I.C., § 40-201, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 206, § 1, p. 512; am. 1986, ch. 328, § 3, p. 803; am. 1987, ch. 130, § 1, p. 261.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 2 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-201. 1929, ch. 169, § 1, p. 302; I.C.A., § 39-201; am. 1974, ch. 12, § 23, p. 61.

40-202. 1929, ch. 169, § 2, p. 302; I.C.A., § 39-202; am. 1974, ch. 12, § 24, p. 61.

40-203. 1929, ch. 169, § 3, p. 302; I.C.A., § 39-203; am. 1974, ch. 12, § 25, p. 61.

CASE NOTES

Designation of public roadways.

Rule-making authority.

State highway system.

Statutory duties.

Designation of Public Roadways.

Commissioners, who had designated roads that ran across private land as public, erred by placing the roadways on an official map as public, and then requiring the landowners to initiate proceedings to vacate the decision. The commissioners were required to prove the public status of the disputed roads. *Homestead Farms, Inc. v. Bd. of Comm'rs*, 141 Idaho 855, 119 P.3d 630 (2005).

Rule-making Authority.

Where the legislature enacts a statute requiring that an administrative agency carry out specific functions, i.e., furnish, erect and maintain signs on side highways, that agency cannot validly subvert the legislation by promulgating contradictory rules; thus, although the legislature delegated some rule-making authority to the DOT to adopt specifications for a uniform system of traffic-control devices, the department was not thereby permitted to institute rules or policies limiting its ability to achieve its express statutory duties to place signs on side roads. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

State Highway System.

In a prosecution against Indian tribe member for leaving the scene of an accident and for aggravated driving under the influence, where the defendant challenged the state's jurisdiction over a section of U.S. highway 95 that is within the boundaries of an Indian reservation, the trial court could have taken judicial notice of the "Official Highway Map" which the Idaho Transportation Department periodically issues and widely distributes for convenience of motorists; while these maps may not be conclusive on the subject of "principal" highways, they are reliable authority. *State v. Smith*, 124 Idaho 671, 862 P.2d 1093 (Ct. App. 1993).

Responsibility of maintaining state highways is on the Idaho Transportation Department, and county sheriffs do not have a duty to remove or warn of rocks on state highways; thus, summary judgment was properly granted in a negligence action brought against a sheriff. *Udy v. Custer County*, 136 Idaho 386, 34 P.3d 1069 (2001).

Statutory Duties.

An administrative agency may not alter, modify or diminish its statutorily-imposed responsibilities, either unilaterally or through agreement with another public or private entity, absent legislative authority to do so; thus, the fact that the county highway district had assumed part of the DOT's legal obligations might affect the rights and liabilities between the department and the county highway district; however, such an agreement between these two entities did not alter the statutory duty owed by the department to the plaintiff involved in a car wreck. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

The DOT alone has an express statutory duty with respect to erecting and maintaining signs at its highways' intersections; the legislature in no way qualified this duty by the condition that the sign-placing or maintenance activities occur exclusively within boundaries of the state highway system; thus, contrary to the department's position that it was without "jurisdiction" to place and maintain signs outside of its right-of-way, the department had both the authority and an express statutory duty to do so. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

District court erred in upholding the validity of a joint powers agreement (JPA) between a city and a highway district, because, while the parties were authorized to enter into the JPA to share the duties and to share the cost of carrying out those duties, the JPA illegally purported to divest the district of the duties to improve and maintain the city street system, or even to supervise those endeavors, while transferring full authority to the city to exercise full control over the city streets, along with its share of ad valorem property tax revenues. *City of Sandpoint v. Indep. Highway Dist.*, 161 Idaho 121, 384 P.3d 368 (2016).

Cited *Taggart v. Highway Bd.*, 115 Idaho 816, 771 P.2d 37 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 1 et seq.

C.J.S. — 39A C.J.S., Highways, § 5 et seq.

ALR. — What constitutes "construction or maintenance" of highways or roads in constitutional provision or statute allowing disbursements from

state road fund for that purpose. 36 A.L.R.5th 657.

§ 40-202. Designation of highways and public rights-of-way. — (1) The initial selection of the county highway system and highway district system may be accomplished in the following manner:

(a) The board of county or highway district commissioners shall cause a map to be prepared showing the general location of each highway and public right-of-way in its jurisdiction, and the commissioners shall cause notice to be given of intention to adopt the map as the official map of that system, and shall specify the time and place at which all interested persons may be heard.

(b) After the hearing, the commissioners shall adopt the map, with any changes or revisions considered by them to be advisable in the public interest, as the official map of the respective highway system.

(2) If a county or highway district acquires an interest in real property for highway or public right-of-way purposes, the respective commissioners shall:

(a) Cause any order or resolution enacted, and deed or other document establishing an interest in the property for their highway system purposes to be recorded in the county records; or

(b) Cause the official map of the county or highway district system to be amended as affected by the acceptance of the highway or public right-of-way.

Provided, however, a county with highway jurisdiction or highway district may hold title to an interest in real property for public right-of-way purposes without incurring an obligation to construct or maintain a highway within the right-of-way until the county or highway district determines that the necessities of public travel justify opening a highway within the right-of-way. The lack of an opening shall not constitute an abandonment, and mere use by the public shall not constitute an opening of the public right-of-way.

(3) Highways laid out, recorded and opened as described in subsection (2) of this section, by order of a board of commissioners, and all highways used for a period of five (5) years, provided they shall have been worked

and kept up at the expense of the public, or located and recorded by order of a board of commissioners, are highways. If a highway created in accordance with the provisions of this subsection is not opened as described in subsection (2) of this section, there shall be no duty to maintain that highway, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs, until the highway is designated as a part of the county or highway district system and opened to public travel as a highway.

(4) When a public right-of-way is created in accordance with the provisions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho Code, there shall be no duty to maintain that public right-of-way, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs.

(5) Nothing in this section shall limit the power of any board of commissioners to subsequently include or exclude any highway or public right-of-way from the county or highway district system.

(6) By July 1, 2005, and at least every five (5) years thereafter, the board of county or highway district commissioners shall publish in map form and make readily available a map showing the general location of all highways and public rights-of-way under its jurisdiction. Any board of county or highway district commissioners may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

(7) Prior to designating a new highway or public right-of-way on the official map, the board of county or highway district commissioners shall confirm that no legal abandonment has occurred on the new highway or right-of-way to be added to the official map. In addition, the board of county or highway district commissioners shall have some basis indicating dedication, purchase, prescriptive use or other means for the creation of a highway and public right-of-way with evidentiary support.

(8) The board of county or highway district commissioners shall give advance notice of hearing, by U.S. mail, to any landowner upon or within whose land the highway or public right-of-way is located whenever a highway or public right-of-way is proposed for inclusion on such map and the public status of such highway or public right-of-way is not already a matter of public record. The purpose of this official map is to put the public

on notice of those highways and public rights-of-way that the board of county or highway district commissioners considers to be public. The inclusion or exclusion of a highway or public right-of-way from such a map does not, in itself, constitute a legal determination of the public status of such highway or public right-of-way. Any person may challenge, at any time, the inclusion or exclusion of a highway or public right-of-way from such map by initiating proceedings as described in [section 40-208\(7\), Idaho Code](#).

(9) Nothing in this section or in any designation of the general location of a highway or public right-of-way shall authorize the public highway agency to assert or claim rights superior to or in conflict with any rights-of-way that resulted from the creation of a facility for the transmission of water which existed before the designation of the location of a highway or public right-of-way.

History.

[I.C., § 40-202](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 206, § 2, p. 512; am. 1988, ch. 184, § 2, p. 322; am. 1992, ch. 55, § 1, p. 160; am. 1993, ch. 412, § 3, p. 1505; am. 1995, ch. 121, § 1, p. 522; am. 1998, ch. 184, § 1, p. 673; am. 2000, ch. 251, § 1, p. 709; am. 2013, ch. 239, § 3, p. 560.

STATUTORY NOTES

Prior Laws.

Former § 40-202 was repealed. See Prior Laws, § 40-201.

Amendments.

The 2013 amendment, by ch. 239, substituted “its jurisdiction” for “their jurisdiction” in paragraph (1)(a); in subsection (6), inserted “at least” near the beginning and “highways and” near the end of the first sentence; inserted subsections (7) and (8); and redesignated former subsection (7) as subsection (9).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: “Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward

during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way.”

Effective Dates.

Section 3 of S.L. 1988, ch. 184 declared an emergency. Approved March 22, 1988.

Section 5 of S.L. 2000, ch. 251 declared an emergency. Approved April 12, 2000.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

CASE NOTES

Constitutionality.

Determinative issues.

Due process.

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Highways by prescription.

Legal status of road.

Maintenance.

Public access.

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Constitutionality.

This section was not unconstitutional on its face; if a landowner believed the acquisition of a roadway pursuant to this section resulted in a taking, the landowner had four years from the accrual of the cause of action to bring a claim of inverse condemnation, § 5-224; the property owner failed to bring an inverse condemnation claim. *Ada County Highway Dist. v. Total Success Invs., LLC*, 145 Idaho 360, 179 P.3d 323 (2008).

Determination that a road was a public highway by prescription did not violate the owners' rights to procedural and substantive due process or result in an unconstitutional taking. The owners were put on notice by the public use of the road and had a hearing; there was a rational basis for the application of § 40-2312 to fix the width of the right-of-way; and an inverse condemnation claim was time-barred under § 5-224. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Determinative Issues.

The main factual issues subsumed by the question of whether a road may be declared a public roadway are the frequency, nature and quality of the public's use and maintenance of the road and the intentions of the landowners and county relevant to the use and maintenance. *Roberts v. Swim*, 117 Idaho 9, 784 P.2d 339 (Ct. App. 1989).

Due Process.

Property owner was afforded due process because it had notice and opportunity to be heard by virtue of this section, the Ada County highway district's filing of an action to quiet title, and the subsequent trial. *Ada County Highway Dist. v. Total Success Invs., LLC*, 145 Idaho 360, 179 P.3d 323 (2008).

Evidence.

Objective manifestations of intent to create a public highway include designating the road as a public highway by the proper public authorities; recording the road as a public highway by order of the board of county commissioners; and the regular maintenance of the road by public expenditure. *Burrup v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), *aff'd*, 115 Idaho 114, 765 P.2d 139 (1988).

Where the only objective manifestation of the county's intention relevant to the road was the county's road work, the work performed by the county road crews in improving the road 900 feet into the landowner's property was merely to assist the landowners in moving their mobile home onto the property, and the snow plowing was done as a gratuitous aid while the mobile home was occupied, the county's maintenance was not sufficient under this section to support the conclusion that the road had become a public highway. *Burrup v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), *aff'd*, 115 Idaho 114, 765 P.2d 139 (1988).

Commissioners, who had designated roads that ran across private land as public, erred by placing the roadways on an official map as public, and then requiring the landowners to initiate proceeding to vacate the decision. The commissioners were required to prove the public status of the disputed roads. *Homestead Farms, Inc. v. Bd. of Comm'rs*, 141 Idaho 855, 119 P.3d 630 (2005).

Highways by Prescription.

A sufficient showing of public use under this section must demonstrate that the public has used the road regularly, as it would any similar public highway, and that public funds were used to maintain the road for a five-year period; the maintenance being more than occasional or sporadic, but as was necessary. *Burrup v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), *aff'd*, 115 Idaho 114, 765 P.2d 139 (1988).

A public road may be acquired by prescription: (1) if the public uses the road for a period of five years, and (2) the road is worked and kept up at the expense of the public. *Lattin v. Adams County*, 149 Idaho 497, 236 P.3d 1257 (2010).

Although §§ 40-203A and 40-1310 contemplate a validation proceeding and action by the highway district, in a suit asserting tort and constitutional claims the district court could determine that a road was a public highway by prescription, and evidence of long-term public use and public maintenance supported that finding. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Legal Status of Road.

This section may be used by counties or by private parties to obtain a declaration that a road is a public highway, either to foreclose private parties from obstructing the road or to confirm the county's duty to maintain the road. *Burup v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), aff'd, 115 Idaho 114, 765 P.2d 139 (1988).

Maintenance.

The maintenance of a road need only consist of work and repairs that are reasonably necessary; it need not be performed in each of five consecutive years nor through the entire length of the road. *Roberts v. Swim*, 117 Idaho 9, 784 P.2d 339 (Ct. App. 1989).

Maintenance of a roadway by a public agency under an express contract, which exchanges such maintenance for limited public access while recognizing the private character of the road, creates no public rights in the roadway beyond those granted by the agreement. *Roberts v. Swim*, 117 Idaho 9, 784 P.2d 339 (Ct. App. 1989).

Public Access.

The necessity of public access is not germane to the determination of public road status under this section. *Roberts v. Swim*, 117 Idaho 9, 784 P.2d 339 (Ct. App. 1989).

Public Use.

To show public use under this section, the facts must demonstrate that minor maintenance work or snow removal, done by the public road crews, was not a mere gratuitous aid to the local landowners or citizens; likewise, it must be shown that the public agency has not expressly agreed to maintain the roadway while continuing to recognize it as private, in

exchange for certain, limited public use, thereby not intending to create or assert rights greater than those allowed in the agreement. *Burruv v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), aff'd, 115 Idaho 114, 765 P.2d 139 (1988).

The primary factual questions in determining whether a road can be declared a public highway are the frequency, nature and quality of the public's use and maintenance. *Burruv v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), aff'd, 115 Idaho 114, 765 P.2d 139 (1988).

To show public use under this section, it must be demonstrated that the public's use of the road was not merely the result of permission given by the owner, as opposed to acquiescence of the owner. *Burruv v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App.), aff'd, 115 Idaho 114, 765 P.2d 139 (1988).

The expenditures of forest service money on a road abandoned by the county were not at the expense of the public within this section; therefore, the forest service rights were private and did not qualify the road as a "public" or "county" road. *French v. Sorensen*, 113 Idaho 950, 751 P.2d 98 (1988), overruled on other grounds, *Cardenas v. Kurpuweit*, 116 Idaho 739, 779 P.2d 414 (1989).

Regular maintenance and extensive public use are sufficient to establish the existence of the public status of a roadway. *Roberts v. Swim*, 117 Idaho 9, 784 P.2d 339 (Ct. App. 1989).

Given that subsection (3) does not require that the public's use be hostile to the landowner's use, the trial court erred, as a matter of law, when it imposed a hostility requirement not found in the statute. Whether the use of a portion of a road and a boat ramp was permissive was irrelevant to the applicability of the statute. *E. Side Highway Dist. v. Delavan*, — Idaho —, — P.3d —, 2019 Ida. LEXIS 222 (Dec. 11, 2019).

Public Use and Maintenance.

The use and maintenance of a road by a public entity must be something more than occasional or sporadic to change the character from private to public. *Rice v. Miniver*, 112 Idaho 1069, 739 P.2d 368 (1987).

Under liberal pleading standards, the plaintiff's complaint was adequate to raise a claim that the road had become a country road through public use

and county maintenance. The complaint was very general and did not specifically allege any of the three manners of creation of public roads specified in this section. Although the plaintiff's complaint lacked desirable detail and specificity, it was sufficient to encompass a claim that the road was rendered a public highway through public use and county maintenance for a period of more than five years. *John W. Brown Properties v. Blaine County*, 129 Idaho 740, 932 P.2d 368 (Ct. App. 1997).

District court's finding of regular maintenance and public use of the disputed strip was supported by substantial and competent evidence in the record; the evidence revealed that the strip was used frequently by adjacent landowners and individuals accessing the businesses of the adjacent landowners and, therefore, supported a conclusion of extensive public use, and the road had been maintained by the Ada County highway district as necessary since 1978. *Ada County Highway Dist. v. Total Success Invs., LLC*, 145 Idaho 360, 179 P.3d 323 (2008).

Cited *Taggart v. Highway Bd.*, 115 Idaho 816, 771 P.2d 37 (1988); *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002).

Decisions Under Prior Law

Abandonment.

Adverse possession against state.

Burden of proof.

Easements.

Evidence.

Grant by federal government.

Highways by prescription.

Immunity from suit.

Legal status of road.

Manner of dedication.

Oral dedication.

Partial acceptance of oral dedication.

Plat dedicating street.

Public county road adjacent.

Public use.

Recognition of private ownership.

Use and maintenance.

Abandonment.

Mere nonuse of a portion of the total width of the highway over a period of years did not constitute an abandonment; therefore defendants were estopped from claiming right and title due to occupation and use of land upon which obstruction stood without interruption for 30 years in spite of the fact that the area in dispute had not been used for highway purposes or kept up or maintained at public expense. *Rich v. Burdick*, 83 Idaho 335, 362 P.2d 1088 (1961).

Adverse Possession Against State.

Possession or use of an unused portion of a highway by an abutting owner was not adverse to the public and could not ripen into a right or title by lapse of time no matter how long continued. *Rich v. Burdick*, 83 Idaho 335, 362 P.2d 1088 (1961).

Burden of Proof.

Burden was on petitioner to show existence of public road. He had to show that it had been laid out and recorded as highway by board of commissioners, or that it had been used as such for five (5) years. *Ross v. Swearingen*, 39 Idaho 35, 225 P. 1021 (1924).

Easements.

In suit to establish both a public and private roadway, after abandonment of claim of existence of public highway, evidence of use of old log road or "tote" was held insufficient to establish an easement of necessity. *Carbon v. Moon*, 68 Idaho 385, 195 P.2d 351 (1948).

The finding of the trial court that a road was a public easement was unsupported by any evidence and, therefore, was clearly erroneous, where the road had been paved and maintained by the city since 1973, but the

action was commenced in May of 1977. *Aztec Ltd. v. Creekside Inv. Co.*, 100 Idaho 566, 602 P.2d 64 (1979).

Evidence.

A map prepared by the county surveyor showing the roads and their classification in Gem County and the general geographical location of the road in question while not recorded as a county road map of Gem County was properly admitted in evidence to establish the road which was obstructed by appellant as a prescriptive public road. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

Grant by Federal Government.

Where, prior to defendant's predecessor taking title to the land, a grant was made by the federal government of a width of 165 feet across the public domain for the establishment of a highway, the title was subject to the grant and to the highway right of way as it had been laid out and recorded prior to the homestead entry. *Rich v. Burdick*, 83 Idaho 335, 362 P.2d 1088 (1961).

Highways by Prescription.

Highway by prescription exists by virtue of user and not on the theory of a grant or dedication. Thus it may be acquired over open and uninclosed land although owner has no desire to use land over which same runs. *Gross v. McNutt*, 4 Idaho 286, 38 P. 935 (1894).

Road could not have been deemed a public highway by user where it was constructed and kept in repair by private landowner who maintained gate across the same. *Palmer v. Northern Pac. R.R.*, 11 Idaho 583, 83 P. 947 (1905).

Public use of highway for the statutory period and the keeping of it in repair at public expense established a highway by prescription, whether road is recorded or not. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

Where a landowner fences his land and leaves a tract 50 feet wide outside of his fence for public road, and public travels such road for five years or more, public has acquired a prescriptive right thereto and owner may not obstruct said road. *State v. Berg*, 28 Idaho 724, 155 P. 968 (1916).

Where there had been little travel over any part of a road and little work done by way of maintaining it and a portion thereof, although maintained, was not in the condition for ordinary vehicular traffic, the court was justified in refusing to find that a road had been established by prescription. *Kootenai County v. Kinman*, 56 Idaho 1, 47 P.2d 887 (1935).

Where there were no positive acts on the part of public authorities manifesting an intention to accept a trail as a public highway, a casual use by the public was insufficient to establish a highway. *Kirk v. Schultz*, 63 Idaho 278, 119 P.2d 266 (1941).

Roads were public highways where one road was used in excess of five years prior to 1893, and other road was duly recorded in 1916 and thereafter was used by the public for 35 years, and work was performed thereon at public expense. *Kosanke v. Kopp*, 74 Idaho 302, 261 P.2d 815 (1953).

Where the public used a highway or road for the statutory period of five years and it was worked and kept up at public expense, a highway was established by prescription and recording of it as such by the board of county commissioners was not necessary. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

The uninterrupted and continuous use of a roadway for more than the prescriptive period while generally creating the presumption that the use is hostile did not in Idaho give rise to an irrefutable or conclusive presumption, since one claiming an easement by prescription over wild lands by mere use was not granted the presumption of adverse user. *Cox v. Cox*, 84 Idaho 513, 373 P.2d 929 (1962).

When a right-of-way has been used by the general public for a period of five years and has been maintained at public expense, the right-of-way became a public highway. *State ex rel. Haman v. Fox*, 100 Idaho 140, 594 P.2d 1093 (1979).

Where in an action by plaintiff residents of an unincorporated area of a county to have certain roads declared public highways and to require the county to maintain the roads, the evidence showed that the county had regularly maintained the roads for approximately nine years, that the roads had been extensively used by the general public, and that the sales of several lots within the area had been made with particular reliance upon

several written representations made by various members of the board of county commissioners that the roads would be maintained by the county, the trial court erred in granting summary judgment for the county because a substantial fact issue existed as to whether the county had accepted the roads. *Pugmire v. Johnson*, 102 Idaho 882, 643 P.2d 832 (1982).

It was not necessary that roads be laid out and recorded as highways before they could become public roads; all that was necessary was that the roads have been used by the public for five years or longer and that they have been worked and kept up at public expense. *Cordwell v. Smith*, 105 Idaho 71, 665 P.2d 1081 (Ct. App. 1983).

Immunity from Suit.

Where the commissioners acted according to a reasonable interpretation of former similar law when they issued a declaration that a road was public, and such law had no provision which required notice to the affected landowner before the county attempted to enforce their decision, the commissioners were entitled to qualified good-faith immunity from suit for damages since the law was not clearly established at the time of their actions. *Evers v. County of Custer*, 745 F.2d 1196 (9th Cir. 1984).

Legal Status of Road.

While a road became public by public use and maintenance over a five-year period, this declaration did not determine the legal status of the road. *Evers v. County of Custer*, 745 F.2d 1196 (9th Cir. 1984).

Manner of Dedication.

Under former law regarding recorded and worked highways roads might have been laid out and recorded as highways by order of the board of commissioners, and all roads used as such for a period of five years, provided the latter should have been worked and kept up at the expense of the public or located and recorded by order of the board of commissioners, are highways. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

It is not necessary that highway be worked throughout its entire length at public expense to become a highway by prescription; it need not be worked at places where there is no necessity for working it. *Gross v. McNutt*, 4 Idaho 286, 38 P. 935 (1894); *State v. Berg*, 28 Idaho 724, 155 P. 968 (1916).

Where there was evidence of use, but none that road was “laid out and recorded” or “worked and kept up at expense of public,” court was right in concluding it was not public road. *Ross v. Swearingen*, 39 Idaho 35, 225 P. 1021 (1924); *Oregon S.L.R.R. v. Caldwell*, 39 Idaho 71, 226 P. 175 (1924).

It was not required that a prescriptive road be worked on for five consecutive years nor did former law require work to be done throughout the road’s entire length, but only required that such work as may be needed be done when necessary for the statutory period, in order to acquire a road by prescription. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

Oral Dedication.

When properly established by evidence, an oral dedication was valid and binding upon the person making it when duly accepted by the public. *Thiessen v. Lewiston*, 26 Idaho 505, 144 P. 548 (1914).

Partial Acceptance of Oral Dedication.

User was a sufficient acceptance of an oral dedication for road purposes, but if the public sees fit to use only a portion of the land dedicated to it, and the person making such dedication acquiesces in such partial acceptance thereof, the dedication was complete and irrevocable as to the part of the land accepted and the unoccupied part was not affected by the unaccepted offer to dedicate it. *Thiessen v. Lewiston*, 26 Idaho 505, 144 P. 548 (1914).

Plat Dedicating Street.

A dedication was complete when a plat was filed showing streets and alleys thereon and sales were made with reference thereto, and such dedication was irrevocable, and did not require an acceptance on the part of the city. *Boise City v. Hon*, 14 Idaho 272, 94 P. 167 (1908).

Public County Road Adjacent.

The public maintenance of a county road did not cause every lane or road that touches or crosses the county road to become a public one, access alone to the county road not being sufficient to make it a public highway. *Cox v. Cox*, 84 Idaho 513, 373 P.2d 929 (1962).

Public Use.

Where gates were in existence across a road barring the passage and making it necessary to open them in order to use the road, the existence of such gates was considered as strong evidence that the road was not a public road. [Cox v. Cox, 84 Idaho 513, 373 P.2d 929 \(1962\)](#).

The facts that the road had not been used for five years by the public, was maintained at the expense of the respondent and that the gates were kept closed, the road only being used by the public with the consent and permission of the respondent, supported the finding of the court that the road did not meet the requirements of former law regarding recorded and worked highways to be classified as a highway. [Cox v. Cox, 84 Idaho 513, 373 P.2d 929 \(1962\)](#).

A road which has not been laid out and recorded as a highway by order of the board of county commissioners, nor been worked and kept up at public expense, cannot be classified as a highway; therefore, property owners were entitled to injunctive relief to prevent its use by others. [Cox v. Cox, 84 Idaho 513, 373 P.2d 929 \(1962\)](#).

The evidence was sufficient to justify the court in concluding that the road was not a public road but that it was one over which people had traveled at will but on which landowners through whose lands it extended had felt at liberty for many years to maintain and had maintained gates. [Cox v. Cox, 84 Idaho 513, 373 P.2d 929 \(1962\)](#).

Recognition of Private Ownership.

Where the public agency expending funds on a roadway expressly recognized the private character of the road, and did not intend to create or to assert any rights greater than those allowed by the owner of the roadway, law regarding recorded and worked highways did not operate to make the road public. [Cordwell v. Smith, 105 Idaho 71, 665 P.2d 1081 \(Ct. App. 1983\)](#).

Where the state's use of labor and equipment on a road running across private property was done largely to provide the state with access into the area in the event of forest fires and gave the state more convenient access to its own timber lands in the area, and where the state did not assert any public ownership or control over the road and neither the county nor any other public agency claimed the road to be public, but on the contrary, the

state specifically sought and obtained written permission to use the road for its limited purposes and also entered into right-of-way agreements with the landowners, allowing loggers of state-owned timber to use the road, the state never intended to create any greater public right to the road than was granted by the owners and law regarding recorded and worked highways did not apply. *Cordwell v. Smith*, 105 Idaho 71, 665 P.2d 1081 (Ct. App. 1983).

Use and Maintenance.

In order to qualify under law almost identical to this section, the use and maintenance must have been something more than only casually and desultorily and not regularly used and maintained; regular maintenance and extensive public use are sufficient to establish a public easement by proscription. However, it need not be for five consecutive years nor through the entire length of the road. *Tomchak v. Walker*, 108 Idaho 446, 700 P.2d 68 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 23 et seq.

C.J.S. — 39A C.J.S., Highways, § 27 et seq.

§ 40-203. Abandonment and vacation of county and highway district system highways or public rights-of-way. — (1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to abandon and vacate any highway or public right-of-way in the county or highway district system including those which furnish public access to state and federal public lands and waters:

(a) The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

(b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivisions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right-of-way within their highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.

(c) The commissioners shall establish a hearing date or dates on the proposed abandonment and vacation.

(d) The commissioners shall prepare a public notice stating their intention to hold a public hearing to consider the proposed abandonment and vacation of a highway or public right-of-way which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request.

(e) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in [section 55-2202, Idaho Code](#), that lies within the highway or public right-of-way.

(f) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting the portion of the highway or public right-of-way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days before the hearing.

(g) At the hearing, the commissioners shall accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment.

(h) After completion of the proceedings and consideration of all related information, the commissioners shall decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law.

(i) If the commissioners determine that a highway or public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of two thousand five hundred dollars (\$2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right-of-way; and provided further, that if the highway or public right-of-way was originally a federal land right-of-way, said highway or public right-of-way shall revert to a federal land right-of-way.

(j) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.

(k) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to [section 40-208, Idaho Code](#).

(2) No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.

(3) In the event of abandonment and vacation, rights-of-way or easements shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in [section 55-2202, Idaho Code](#), for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.

(4)(a) When a county or highway district is to consider the abandonment or vacation of any highway, public street or public right-of-way that was accepted as part of a recorded platted subdivision, such abandonment shall be accomplished pursuant to the provisions of this section.

(b) When a county is to consider the abandonment or vacation of any private right-of-way that was accepted as part of a recorded platted subdivision said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.

(5) In any proceeding under this section or [section 40-203A, Idaho Code](#), or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or public right-of-way shall be deemed abandoned if the evidence shows:

(a) That said highway or public right-of-way was created solely by a particular type of common law dedication, to wit, a dedication based upon a plat or other document that was not recorded in the official records of an Idaho county;

(b) That said highway or public right-of-way is not located on land owned by the United States or the state of Idaho nor on land entirely

surrounded by land owned by the United States or the state of Idaho nor does it provide the only means of access to such public lands; and

(c)(i) That said highway or public right-of-way has not been used by the public and has not been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years; or

(ii) Said highway or right-of-way was never constructed and at least twenty (20) years have elapsed since the common law dedication.

All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any abandonment under this subsection shall be subject to and limited by the provisions of subsections (2) and (3) of this section.

History.

I.C., § 40-203, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 206, § 3, p. 512; am. 1986, ch. 328, § 4, p. 803; am. 1992, ch. 323, § 1, p. 958; am. 1993, ch. 412, § 4, p. 1505; am. 1995, ch. 121, § 2, p. 522; am. 2000, ch. 251, § 2, p. 709; am. 2013, ch. 239, § 4, p. 560; am. 2014, ch. 137, § 1, p. 372.

STATUTORY NOTES

Cross References.

Penalty for violation of provision of this title, § 40-207.

Prior Laws.

Former § 40-203 was repealed. See Prior Laws, § 40-201.

Amendments.

The 2013 amendment, by ch. 239, in paragraph (1)(a), substituted “or to reclassify a public highway as a public right-of-way, where doing so is” for “considered no longer to be”; added the last sentence in subsection (2); substituted “shall be reserved” for “may be reserved” near the beginning of

subsection (3); deleted former subsections (4) and (5), which read, “(4) A highway abandoned and vacated under the provisions of this section may be reclassified as a public right-of-way. (5) Until abandonment is authorized by the commissioners, public use of the highway or public right-of-way may not be restricted or impeded by encroachment or installation of any obstruction restricting public use, or by the installation of signs or notices that might tend to restrict or prohibit public use. Any person violating the provisions of this subsection shall be guilty of a misdemeanor”; redesignated former subsection (6) as subsection (4); and added present subsection (5).

The 2014 amendment, by ch. 137, in subsection (4), inserted paragraph (a); inserted the (b) designation; and substituted “a county is to consider” for “a county or highway district desires” and substituted “private right-of-way” for “highway, public street or public right-of-way” in paragraph (b).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: “Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way.”

Effective Dates.

Section 5 of S.L. 2000, ch. 251 declared an emergency. Approved April 12, 2000.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

CASE NOTES

[Abandonment.](#)

[Access to public lands or waters.](#)

[Validation of public right-of-way.](#)

[Abandonment.](#)

A public highway must exist before it can be abandoned. [Burrup v. Stanger, 114 Idaho 50, 753 P.2d 261 \(Ct. App.\), aff'd, 115 Idaho 114, 765 P.2d 139 \(1988\).](#)

Where the record did not reflect that the Idaho Transportation Department (ITD) followed the statutory procedure to abandon highway where accident occurred killing plaintiff's son, even though it had not been used by the ITD for more than 30 years, a question of material fact as to whether the ITD properly abandoned such highway existed and trial court erred in granting summary judgment for the ITD. [Dachlet v. State, 130 Idaho 204, 938 P.2d 1242 \(1997\).](#)

District court properly granted a motion for summary judgment under [Idaho R. Civ. P. 56\(c\)](#) in a case involving a dispute over the alleged abandonment of a boundary road where two neighbors and others established that the road had not received any public use or maintenance over the last five years. [John W. Brown Props. v. Blaine County, 138 Idaho 171, 59 P.3d 976 \(2002\).](#)

Where an owner's affidavits concerning the use and maintenance of a gravel road were general and conclusory, they did not set forth specific facts showing the existence of a genuine issue for trial, as required by [Idaho R. Civ. P. 56\(e\)](#). [John W. Brown Props. v. Blaine County, 138 Idaho 171, 59 P.3d 976 \(2002\).](#)

Abandonment of a gravel road that had no public use or maintenance for five years did not result in landlocked property because the owner of the land was still permitted to use the road for access. *John W. Brown Props. v. Blaine County*, 138 Idaho 171, 59 P.3d 976 (2002).

Because five years passed with no public use or maintenance on a gravel boundary road, the road ceased to be defined as a public road; the abandonment did not require any formal action by county commissioners. *John W. Brown Props. v. Blaine County*, 138 Idaho 171, 59 P.3d 976 (2002).

Because the court determined that a road was a public road and not abandoned prior to 1963, the procedures outlined in this section applied to any claims of abandonment between 1963 and 1998, and the trial court erred in finding otherwise. *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Bona fide purchaser for value defense was not available to defendant landowner in an action for injunctive relief to enforce a public right to way, because the defense would constitute an abandonment of a county road in contravention of this section. *Trunnell v. Fergel*, 153 Idaho 68, 278 P.3d 938 (2012).

Access to Public Lands or Waters.

Lack of public use or maintenance for five years does not automatically terminate the public's rights with respect to roads furnishing access to public lands or waters. Affirmative action by the county commissioners is required to abandon such roads. *Blaine County v. Bryson*, 109 Idaho 123, 705 P.2d 1078 (Ct. App. 1985).

Roads that furnish public access to state or federal public lands or waters cannot be obstructed without first petitioning the county commissioners or highway district; the commissioners having jurisdiction must then take some affirmative action before abandonment is complete. *French v. Sorensen*, 113 Idaho 950, 751 P.2d 98 (1988), overruled on other grounds, *Cardenas v. Kurpjuweit*, 116 Idaho 739, 779 P.2d 414 (1989).

Private landowners, by obstructing public access to public lands or waters, act at their peril unless the detailed requirements of the statutes are

satisfied strictly. *French v. Sorensen*, 113 Idaho 950, 751 P.2d 98 (1988), overruled on other grounds, *Cardenas v. Kurpjuweit*, 116 Idaho 739, 779 P.2d 414 (1989).

Where property owner filed the action after a neighbor sought to block property owner's use of the road by erecting a barricade and the highway district denied any relief to property owner, decision of the district court that the road was public and not abandoned as a public road by the highway district was correct; the road was not abandoned since, according to the requirements of the section prior to the 1986 amendment, the road was not established by prescription but rather by formal action of the then governing entity and the evidence indicated continued usage of the road to the present time, and since the highway district did not initiate any formal proceedings in conformance with the amended statute to withdraw the road in question from its highway district system. *Taggart v. Highway Bd.*, 115 Idaho 816, 771 P.2d 37 (1988).

Validation of Public Right-of-Way.

Because the highway district's board of commissioners did not make sufficient findings of fact and conclusions of law regarding either the existence of the old road prior to 1968 or its subsequent alleged abandonment under former § 40-104, the board's order validating public right-of-way over road was vacated. *Galvin v. Canyon Hwy. Dist. No. 4*, 134 Idaho 576, 6 P.3d 826 (2000).

Cited *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002); *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497 (2011).

Decisions Under Prior Law

Abandonment.

Easement vested in public.

Instructions.

Obstructions.

Period of nonuse.

Abandonment.

Where there was a valid common law dedication of a road, the fact that such road had not been worked or used for a period of five years did not constitute an abandonment thereof merely by virtue of former § 40-104 (repealed by S.L. 1985, ch. 253, § 1). *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

A highway district, acting through its commissioners, has the power to abandon public highways following a public hearing. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

Easement Vested in Public.

When a highway or road was once established by prescription, such establishment vested in the public an easement in, or right to use, the land over which the road runs for highway purposes; and the public could not be divested of this right save by vacation or abandonment of the highway in the manner prescribed by law. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

Where an easement for a road was acquired prior to the time the patent was issued, the owner of the land took the title subject to such easement. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

Instructions.

A requested instruction to the effect that the maintenance of gates on some portions of a road was strong evidence it was not a public road was properly refused inasmuch as the road having been established by prescription could only cease to be a public road by abandonment as provided by law. *State v. Nesbitt*, 79 Idaho 1, 310 P.2d 787 (1957).

Obstructions.

Where an oral dedication of land for road purposes had been accepted, in part, by the public by user, the public took an easement over the land for the full width agreed upon by the dedication and accepted by the public and no obstructions placed in said road would work a forfeiture of the easement however long they might be suffered to remain there. *Thiessen v. Lewiston*, 26 Idaho 505, 144 P. 548 (1914).

Period of Nonuse.

Where the trial court found that no public funds were expended for maintenance at any time of the alleged highway over the plaintiff's land, and where it was further found that a washout occurred between 1928 and 1943, and that such damage was never repaired, there was substantial and competent evidence to support the trial court's finding of nonuse and nonwork prior to 1963 for the required five year period. *Elder v. Northwest Timber Co.*, 101 Idaho 356, 613 P.2d 367 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 174 et seq.

C.J.S. — 39A C.J.S., Highways, § 128 et seq.

§ 40-203A. Validation of county or highway district system highway or public right-of-way. — (1) Any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, to initiate public proceedings to validate a highway or public right-of-way, including those which furnish public access to state and federal public lands and waters, provided that the petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings, or the commissioners may initiate validation proceedings on their own resolution, if any of the following conditions exist:

(a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way;

(b) If the location of the highway or public right-of-way cannot be accurately determined due to numerous alterations of the highway or public right-of-way, a defective survey of the highway, public right-of-way or adjacent property, or loss or destruction of the original survey of the highways or public rights-of-way; or

(c) If the highway or public right-of-way as traveled and used does not generally conform to the location of a highway or public right-of-way described on the official highway system map or in the public records.

(2) If proceedings for validation of a highway or public right-of-way are initiated, the commissioners shall follow the procedure set forth in [section 40-203, Idaho Code](#), and shall:

(a) If the commissioners determine it is necessary, cause the highway or public right-of-way to be surveyed;

(b) Cause a report to be prepared, including consideration of any survey and any other information required by the commissioners;

(c) Establish a hearing date on the proceedings for validation;

(d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and

(e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.

(3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right-of-way is in the public interest and shall enter an order validating the highway or public right-of-way as public or declaring it not to be public.

(4) From any such decision, any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to [section 40-208, Idaho Code](#).

(5) When a board of commissioners validates a highway or public right-of-way, it shall cause the order validating the highway or public right-of-way, and if surveyed, cause the survey to be recorded in the county records and shall amend the official highway system map of the respective county or highway district.

(6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure that, prior to creation of the highway or public right-of-way, encroached upon a highway or public right-of-way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right-of-way being validated.

(7) This section does not apply to the validation of any highway, public street or public right-of-way which is to be accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

History.

[I.C., § 40-203A](#), as added by 1986, ch. 206, § 4, p. 512; am. 1993, ch. 412, § 5, p. 1505; am. 1995, ch. 121, § 3, p. 522; am. 2000, ch. 251, § 3, p. 709.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 2000, ch. 251 declared an emergency. Approved April 12, 2000.

CASE NOTES

Application.

Findings of fact.

Power of court.

Application.

This section may only be used to validate an existing highway or public right-of-way about which there is some kind of doubt; it does not allow for the creation of new public rights. *Galvin v. Canyon Hwy. Dist. No. 4*, 134 Idaho 576, 6 P.3d 826 (2000).

County board of commissioners correctly determined that it was in the public interest for the road to be a public highway; there was substantial evidence supporting this finding as the road became public while the underlying land was federal property and a number of people testified that they regularly used the road to access the national forest. *Sopatyk v. Lemhi County*, 151 Idaho 809, 264 P.3d 916 (2011).

Findings of Fact.

Because the highway district's board of commissioners did not make sufficient findings of fact and conclusions of law regarding either the existence of the old road prior to 1968 or its subsequent alleged abandonment under former § 40-104, the board's order validating public right-of-way was vacated. *Galvin v. Canyon Hwy. Dist. No. 4*, 134 Idaho 576, 6 P.3d 826 (2000).

Power of Court.

Although this section and § 40-1310 contemplate a validation proceeding and action by the highway district, the district court had power to determine, in a suit asserting tort and constitutional claims, that a road was a public highway by prescription under § 40-202(3). Evidence of long-term public use and public maintenance supported that finding. *Halvorson v. N.*

Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Cited Cobbley v. City of Challis, 143 Idaho 130, 139 P.3d 732 (2006).

§ 40-203B. Abandonment or assuming control of a highway. —

Whenever the Idaho transportation department is either planning to abandon any section or all of a state highway to a county, a city or a highway district or assume control of a section or all of a highway which is under the jurisdiction of a county, city or a highway district, the transportation department shall first obtain the consent of the applicable local highway jurisdiction before it may abandon or assume control of the highway. Consent shall be obtained by passage of a resolution by the local highway jurisdiction assenting to the proposed action of the transportation department. Prior to consenting to an abandonment or assumption of the applicable highway, the local highway jurisdiction may conduct a public hearing and also provide notice to any impacted property owners, businesses, industries and enterprises. If consent is not obtained as provided in this section, the action by the transportation department regarding the abandonment of a state highway or assumption of control of a local jurisdiction highway shall be null, void, and of no force and effect.

History.

I.C., § 40-203B, as added by 1990, ch. 60, § 1, p. 136; am. 2013, ch. 141, § 2, p. 336.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 141, inserted the next-to-last sentence.

Effective Dates.

Section 2 of S.L. 1990, ch. 60 declared an emergency. Approved March 20, 1990.

CASE NOTES

Abandonment.

Where the record did not reflect that the Idaho Transportation Department (ITD) followed the statutory procedure to abandon highway

where accident occurred killing plaintiff's son, even though it had not been used by the ITD for more than 30 years, a question of material fact as to whether the ITD properly abandoned such highway existed and trial court's erred in granting summary judgment for the ITD. *Dachlet v. State*, 130 Idaho 204, 938 P.2d 1242 (1997).

§ 40-204. Assent to federal acts. — (1) The state of Idaho renews its assent to the provisions of the act of congress approved July 11, 1916, entitled, “An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes” (39th United States Statutes at Large, page 355), and its amendments or acts supplementary to it, and accepts the provisions and benefits of any act of congress enacted having for its purpose the construction, improvement and maintenance of public roads or highways in the state of Idaho.

(2) The state of Idaho renews its assent to the provisions of the act of congress approved October 22, 1965, entitled, “An act to provide for scenic development and road beautification of the federal-aid highway systems” (**Public Law 89-285**), and its amendments, or acts supplementary to it and accepts the provisions and benefits of any act of congress enacted having for its purpose the control of outdoor advertising, and junkyards adjacent to highways, or the landscaping and scenic enhancement of highways in the state of Idaho.

History.

I.C., § 40-204, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Federal References.

The act of congress approved July 11, 1916, 39 Statutes At Large 355, referred to in subsection (1), was repealed by **P.L. 85-767**, Act Aug. 27, 1958. A similar provision is currently compiled as **23 USCS § 121(c)**.

The act of congress approved October 22, 1965, **P.L. 89-285**, referred to in subsection (2), is compiled as **23 USCS §§ 101** (also notes preceding § 101), 131, 131, notes, 135, 136, note, and 319.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 40-204A. Federal land rights-of-way. — (1) The state recognizes that the act of construction and first use constitute the acceptance of the grant given to the public for federal land rights-of-way, and that once acceptance of the grant has been established, the grant shall be for the perpetual term granted by the congress of the United States.

(2) The only method for the abandonment of these rights-of-way shall be that of eminent domain proceedings in which the taking of the public's right to access shall be justly compensated. Neither the mere passage of time nor the frequency of use shall be considered a justification for considering these rights-of-way to have been abandoned.

(3) All of the said rights-of-way shall be shown by some form of documentation to have existed prior to the withdrawal of the federal grant in 1976 or to predate the removal of land through which they transit from the public domain for other public purposes. Documentation may take the form of a map, an affidavit, surveys, books or other historic information.

(4) These rights-of-way shall not require maintenance for the passage of vehicular traffic, nor shall any liability be incurred for injury or damage through a failure to maintain the access or to maintain any highway sign. These rights-of-way shall be traveled at the risk of the user and may be maintained by the public through usage by the public.

(5) Any member of the public, the state of Idaho and any of its political subdivisions, and any agency of the federal government may choose to seek validation of its rights under law to use granted rights-of-way either through a process set forth by the state of Idaho, through processes set forth by any federal agency or by proclamation of user rights granted under the provisions of the original act, Revised Statute 2477.

Persons seeking to have a federal land right-of-way, including those which furnish public access to state and federal public lands and waters, validated as a highway or public right-of-way as part of a county or highway official highway system, shall follow the procedure outlined in [section 40-203A, Idaho Code](#).

Neither the granting of the original right-of-way nor any provision in this or any other state act shall be construed as a relinquishment of either federal ownership or management of the surface estate of the property over which the right-of-way passes.

(6) Persons seeking acknowledgement of federal land rights-of-way shall file with the county recorder the request for acknowledgement and for any supporting documentation. The county recorder shall record acknowledgements, including supporting documentation, and maintain an appropriate index of same.

History.

I.C., § 40-204A, as added by 1993, ch. 142, § 3, p. 375; am. 2000, ch. 251, § 4, p. 709.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1993, ch. 142 read: “The State of Idaho recognizes that existing federal land rights of way are extremely important to all of Idaho’s citizens. Two-thirds of Idaho’s land is under control of the federal government and access to such federal lands is integral to public use. The Idaho State legislature recognizes the necessity for establishing a procedure for identifying and confirming the existence of previously established federal rights of way, to protect those rights previously granted to and vested in, the citizens of Idaho.”

Federal References.

Revised statutes 2477, referred to at the end of the first paragraph in subsection (5) and codified as 43 U.S.C. 932, was repealed by P.L. 94-579, effective October 1, 1976.

Effective Dates.

Section 4 of S.L. 1993, ch. 142 declared an emergency. Approved March 25, 1993.

Section 5 of S.L. 2000, ch. 251 declared an emergency. Approved April 12, 2000.

CASE NOTES

Jurisdiction.

District court erred in dismissing the property owners' action seeking validation of a road as a United States Revised Statute 2477 (R.S. 2477) right-of-way on federal land, where the county provided no evidence showing that the federal government disputed title to the road and the owners' historical records presented at least a colorable claim to an R.S. 2477 right-of-way.. *Nemeth v. Shoshone Cty.*, — Idaho —, 453 P.3d 844 (2019).

§ 40-205. Saving clause for acts and suits in process of being carried out. — This act shall not affect any act done, ratified or confirmed, or any right accrued, or established, or any action or proceeding had or commenced in a civil or criminal cause prior to July 1, 1985, and actions or proceedings may be prosecuted and continued by the department, and when required, by the board or the director, as the case may be.

History.

I.C., § 40-205, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1985, ch. 253, which is compiled as §§ 21-136, 34-625, 49-448, 49-1011, 50-313, 63-2412, 63-2418, 63-2440 and generally throughout title 40, Idaho Code.

§ 40-206. Publication of notices. — Whenever publication of a notice by a county highway system or highway district is required for an override or bond election, or a hearing, it shall appear in a newspaper printed and published within the district or county, or in some newspaper of general circulation in the county or district, and the notice shall be published as follows:

(1) The publication of notice for an override or bond election shall be published as provided for in [section 34-1406, Idaho Code](#).

(2) The publication of notice for a hearing shall be published at least one (1) time in a weekly newspaper or at least two (2) consecutive times in a daily newspaper and remain the responsibility of the political subdivision proposing such hearing. The last notice shall be published not less than five (5) days prior to the hearing, except as otherwise specifically provided in this title.

History.

[I.C., § 40-206](#), as added by 1989, ch. 349, § 2, p. 876; am. 1994, ch. 123, § 1, p. 274; am. 2009, ch. 341, § 71, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-206, which comprised [I.C., § 40-206](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 5, p. 803, was repealed by S.L. 1989, ch. 349, § 1.

Amendments.

The 2009 amendment, by ch. 341, in subsection (1), substituted “published as provided for in [section 34-1406, Idaho Code](#)” for “published at least three (3) times in a weekly newspaper or at least six (6) consecutive times in a daily newspaper” and deleted the last sentence, which read: “The last notice shall be published not less than five (5) days prior to an override or bond election, except as otherwise specifically provided in this title”;

and, in the first sentence in subsection (2), added “and remain the responsibility of the political subdivision proposing such hearing.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-207. Violations — Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this title, unless a different penalty is prescribed by law, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than five hundred dollars (\$500), or imprisonment for a period not to exceed ninety (90) days, or by both such fine and imprisonment. All fines collected for violations of the provisions of this title shall be paid into the highway distribution account established in [section 40-701, Idaho Code](#).

History.

[I.C., § 40-207](#), as added by 1985, ch. 253, § 2, p. 586.

§ 40-208. Judicial review. — (1) Any resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, who is aggrieved by a final decision of a board of county or highway district commissioners in an abandonment and vacation or validation proceeding is entitled to judicial review under the provisions of this section.

(2) Proceedings for review are instituted by filing a petition in the district court of the county in which the commissioners have jurisdiction over the highway or public right-of-way within twenty-eight (28) days after the filing of the final decision of the commissioners or, if a rehearing is requested, within twenty-eight (28) days after the decision thereon.

(3) The filing of the petition does not itself stay enforcement of the commissioners' decision. The reviewing court may order a stay upon appropriate terms.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the commissioners shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be ordered by the court to pay for additional costs. The court may require subsequent corrections to the record and may also require or permit additions to the record.

(5) The parties may present additional evidence to the court, upon a showing to the court that such evidence is material to the issues presented to the court. In such case, the court may order that the additional information be presented to the commissioners upon conditions determined by the court. The commissioners may modify their findings and decisions by reason of the additional information and shall file that information and any modifications, new findings, or decisions with the reviewing court.

(6) Either party to a proceeding may request in writing that a judge who resides outside the county where the subject road or property is located be appointed to hear the case, and, upon such written request, such a judge

shall be appointed for the case. The review shall be conducted by the court without a jury. The court shall consider the record before the board of county or highway district commissioners and shall defer to the board of county or highway district commissioners on matters in which such board has appropriately exercised its discretion with respect to the evaluation of the public interest. As to the determination of highway or public right-of-way creation, width and abandonment, the court may accept new evidence and testimony supplemental to the record provided by the county or highway district, and the court shall consider those issues anew. In cases of alleged irregularities in procedure before the commissioners, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) Any person other than a board of county or highway district commissioners seeking a determination of the legal status or the width of a highway or public right-of-way shall first petition for the initiation of validation or abandonment proceedings, or both, as provided for in sections 40-203(1)(b) and 40-203A(1), Idaho Code. If the commissioners having jurisdiction over the highway system do not initiate a proceeding in response to such a petition within thirty (30) days, the person may seek a determination by quiet title or other available judicial means. When the legal status or width of a highway or public right-of-way is disputed and where a board of county or highway district commissioners wishes to determine the legal status or width of a highway or public right-of-way, the commissioners shall initiate validation or abandonment proceedings, or both, as provided for in sections 40-203 and 40-203A, Idaho Code, rather than initiating an action for quiet title. If proceedings pursuant to the provisions of section 40-203 or 40-203A, Idaho Code, are initiated, those proceedings and any appeal or remand therefrom shall provide the exclusive basis for determining the status and width of the highway, and no court shall have jurisdiction to determine the status or width of said highway except by way of judicial review provided for in this section. Provided that nothing in this subsection shall preclude determination of the legal status or width of a public road in the course of an eminent domain proceeding, as provided for in chapter 7, title 7, Idaho Code.

History.

I.C., § 40-208, as added by 1993, ch. 412, § 6, p. 1505; am. 2013, ch. 239, § 5, p. 560; am. 2016, ch. 358, § 1, p. 1051.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 239, rewrote the section to the extent that a detailed comparison is impracticable.

The 2016 amendment, by ch. 358, added the first sentence in subsection (6).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: “Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way.”

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

CASE NOTES

Jurisdiction.

Retroactivity.

Separate proceedings.

Jurisdiction.

District court erred in dismissing the property owners' action seeking validation of a road as a United States Revised Statute 2477 (R.S. 2477) right-of-way on federal land, where the county provided no evidence showing that the federal government disputed title to the road and the owners' historical records presented at least a colorable claim to an R.S. 2477 right-of-way. *Nemeth v. Shoshone Cty.*, — Idaho —, 453 P.3d 844 (2019).

Retroactivity.

This section defines the standard of review for an appeal from a commissioner's decision and is procedural in nature. Therefore, the statute can be applied retroactively and the decision of the district court to review the case de novo was erroneous. *Floyd v. Board of Comm'rs*, 131 Idaho 234, 953 P.2d 984 (1998).

Separate Proceedings.

A petition for judicial review of a road-validation decision of a local governing board is a distinct form of proceeding and cannot be brought as a pleading or motion within an underlying civil lawsuit. *Cobbley v. City of Challis*, 143 Idaho 130, 139 P.3d 732 (2006).

Cited *Galvin v. Canyon Hwy. Dist. No. 4*, 134 Idaho 576, 6 P.3d 826 (2000); *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002); *Homestead Farms, Inc. v. Bd. of Comm'rs*, 141 Idaho 855, 119 P.3d 630 (2005); *Galli v. Idaho County*, 146 Idaho 155, 191 P.3d 233 (2008).

§ 40-209. Highway right-of-way plats. — (1) A public highway agency may file in the office of the county recorder a highway right-of-way plat. The highway right-of-way plat shall show by outline and identify by parcel number, parcels of land to be acquired and shall be prepared in conformance with [sections 55-1905 through 55-1907, Idaho Code](#). The recording of a highway right-of-way plat as provided in this section shall not excuse a county or highway district from the requirements of abandonment or validation of a public highway or public right-of-way as provided in sections 40-203 and 40-203A, Idaho Code. The highway right-of-way plat shall contain the following:

- (a) Project name and number;
- (b) The location and monumentation of the points where the right-of-way changes direction by angle point or curvature and its intersection with any public highway, street or trail right-of-way and all witness corners and reference points. All points shall be marked with magnetically detectable monuments conforming to the provisions of [section 54-1227, Idaho Code](#), unless special circumstances preclude use of such monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot;
- (c) An outline showing the boundary of each parcel of land to be acquired based on ownership records and the right-of-way location survey;
- (d) An identifying parcel number and the area for each parcel of land to be acquired;
- (e) Acknowledgement of authorized agent of the public highway agency filing said plat;
- (f) Certificate of land surveyor under whose responsible charge the plat is prepared.

(2) The highway right-of-way plat filed with the county recorder of any county shall be assigned an instrument number and shall be bound or filed with other plats of like character in a book on file designated “Highway Right-of-Way Plats.”

(3) Any amendments, alterations, rescissions or changes in a highway right-of-way plat shall comply with subsection (1) of this section and shall be filed in a like manner. The recorder may make suitable notations on the appropriate highway right-of-way plat affected by the amendment, alteration, rescission or change to direct the attention of anyone examining the record to the proper plat.

(4) Highway right-of-way plats filed under this section shall not operate to transfer title to the real property described therein but such plat shall be used for delineation purposes. Acquisition of real property for highway right-of-way by conveyance or judicial decree may refer to said highway right-of-way plat, project number and parcel identification number, together with delineation of the parcel as a valid description of the real property for all purposes.

(5) The agency making the initial filing in a county shall reimburse the county recorder the actual cost of the plat book required in subsection (2) of this section.

History.

I.C., § 40-209, as added by 1994, ch. 364, § 2, p. 1139; am. 2011, ch. 136, § 5, p. 383.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 136, in the introductory paragraph in subsection (1), deleted “tracts or” following “parcel number” and substituted “sections 55-1905 through 55-1907” for “chapter 19, title 55”; rewrote paragraph (1)(b), which formerly read: “Monuments found, set, reset, replaced or removed describing their kind, size and location and giving other data relating thereto”; rewrote paragraph (1)(c), which formerly read: “Bearings, basis of bearings, length of lines, scale of map and north arrow”; rewrote paragraph (1)(d), which formerly read: “Section, or part of section, township, range and reference to adjoin plats or surveys of record; and ties to at least two (2) public land surveying corners, or in lieu of public land survey corners, to two (2) monuments recognized by the city engineer or surveyor, or county engineer or surveyor”; and deleted

former paragraph (1)(e), which read: “Outline of all parcels of land to be acquired, identifying them with parcel identification numbers” and redesignated the remaining paragraphs accordingly.

§ 40-210. Legislative intent — Utility facilities — Coordinated relocation policies — Definitions. — (1) Public highways are intended principally for public travel and transportation; however, the public highways and the public right-of-way used in connection with the public highways are also lawfully used in connection with uses associated with utility purposes necessary to provide utility services to the public. Without making use of public highways and their associated rights-of-way, the utility facilities and services could not reach or economically serve the residents of the state of Idaho.

Therefore, it is the intent of the legislature that the public highway agencies and utilities engage in proactive, cooperative coordination of highway projects through a process that will attempt to effectively minimize costs, limit the disruption of utility services, and limit or reduce the need for present or future relocation of such utility facilities.

(2) In furtherance of the legislative intent expressed in subsection (1) of this section, public highway agencies engaged in a public highway project that may require the relocation of utility facilities, or any private party working with a public highway agency on a project that may require the relocation of utility facilities in connection therewith, shall permit the affected utility to participate in project development meetings. In addition, at the beginning of the preliminary design phase of the project, the public highway agency shall, upon giving written notice of not less than thirty (30) days to the affected utility, meet with the utility for the purpose of allowing the utility to review plans, understand the goals, objectives and funding sources for the proposed project, provide and discuss recommendations to the public highway agency that would reasonably eliminate or minimize utility relocation costs, limit the disruption of utility services, eliminate or reduce the need for present or future utility facility relocation, and provide reasonable schedules to enable coordination of the highway project construction and such utility facility relocation as may be necessary. While recognizing the essential goals and objectives of the public highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to (a) eliminate the cost to the utility of relocation of the

utility facilities, or (b) if elimination of such costs is not feasible, minimize the relocation costs to the maximum extent reasonably possible.

(3) If a utility has received notice of the preliminary design meeting as set forth in subsection (2) of this section and has failed to respond or participate in meetings described therein, such failure to respond or participate in such meetings shall not in any way affect the ability of the public highway agencies to proceed with the project design or construction.

(4) As used in this section:

(a) “Utility” means an entity comprised of any person, private company, public agency or cooperative owning and/or operating utility facilities.

(b) “Utility facility” means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, cable television, electricity, light, heat, gas, oil, crude products, ore, water, steam, waste or storm water not connected with highway drainage and other similar commodities.

(5) No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other political subdivision having jurisdiction over the public right-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of the applicable local ordinance or regulations governing the use of the public right-of-way.

History.

I.C., § 40-210, as added by 2009, ch. 142, § 1, p. 426.

CASE NOTES

Relocation Costs.

Although the legislature has the authority to order public highway agencies to use their best efforts to minimize the cost of relocating utility facilities within a right-of-way, the Idaho public utilities commission does not have that authority. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Chapter 3

IDAHO TRANSPORTATION BOARD

Sec.

General

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GENERAL

« Title 40 •, « Ch. 3 », • § 40-301 »

Idaho Code § 40-301

§ 40-301. Idaho transportation board — Creation — Authority. —
There is established the Idaho transportation board, which is vested with authority, control, supervision and administration of the department created and established by this title.

History.

I.C., § 40-301, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 3 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-301. R.S., § 860; reen. R.C. & C.L., § 787; C.S., § 1307; I.C.A., § 39-301; am. 1953, ch. 100, § 1, p. 134.

40-302. 1911, ch. 211, p. 703; reen. C.L., § 878a; C.S., § 1308; I.C.A., § 39-302.

40-303. R.S., § 861; reen. R.C. & C.L., § 879; C.S., § 1309; I.C.A., § 39-303.

40-304. R.S., § 862; reen. R.C. & C.L., § 880; C.S., § 1310; I.C.A., § 39-304.

40-305. R.S., § 863; reen. R.C. & C.L., § 881; C.S., § 1311; I.C.A., § 39-305.

40-306. 1945, ch. 86, § 1, p. 134; am. 1947, ch. 103, § 1, p. 209.

40-307. 1945, ch. 86, § 2, p. 134.

40-308. **I.C., § 40-308**, as added by 1961, ch. 79, § 1, p. 108; am. 1974, ch. 12, § 26, p. 61; am. 1984, ch. 251, § 1, p. 603.

§ 40-302. Board — Membership — Appointment — Qualification. —

The board shall be composed of seven (7) members to be appointed by the governor. Not more than four (4) members shall at any time belong to the same political party. Members shall be well informed and interested in the construction and maintenance of public highways and highway systems, and their selection and appointment shall be made solely with regard to the best interests of the various functions of the board. At least one (1) member shall have special training, experience or expertise in the field of aeronautical transportation. Each member at the time of his appointment shall have been a citizen, resident and taxpayer of the state of Idaho and of the district from which he is appointed for at least five (5) years. During his tenure of office no member shall hold or occupy any federal, state, county, or municipal elective or other appointive office, or any office in any political party.

History.

I.C., § 40-302, as added by 1985, ch. 253, § 2, p. 586; am. 1995, ch. 203, § 1, p. 695.

STATUTORY NOTES

Prior Laws.

Former § 40-302 was repealed. See Prior Laws, § 40-301.

§ 40-303. Creation of districts — Residence of board members — Term of office. — (1) For the purposes of selection of members of the board, the state of Idaho shall be divided into six (6) director districts as follows:

- (a) District No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.
- (b) District No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.
- (c) District No. 3. The counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington.
- (d) District No. 4. The counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.
- (e) District No. 5. The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida and Power.
- (f) District No. 6. The counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton.

(2) Each of the districts shall be represented by one (1) member appointed from that district. A seventh member of the board shall be appointed from the state at large and shall act as chairman of the board. The governor shall appoint all members and the members are subject to confirmation by the senate. The chairman of the board shall serve at the pleasure of the governor for an indefinite period. The terms of office of the members of the board representing the six (6) districts are as follows:

- (a) One (1) member shall be appointed from district no. 1 to serve an initial term expiring January 31, 2001, and thereafter the term shall be for six (6) years;
- (b) The member of the board from district no. 2 serving on the effective date of this act shall continue in office for the balance of the term to which he was appointed, January 31, 1998, and thereafter the term of office shall be six (6) years;

(c) One (1) member shall be appointed from district no. 3 to serve an initial term expiring January 31, 1997, and thereafter the term of office shall be six (6) years;

(d) The member of the board from district no. 4 serving on the effective date of this act shall continue in office for the balance of the term to which he was appointed, January 31, 2000, and thereafter the term shall be six (6) years;

(e) One (1) member shall be appointed from district no. 5 to serve an initial term expiring January 31, 1999, and thereafter the term shall be for six (6) years; and

(f) The member of the board from district no. 6 serving on the effective date of this act shall continue in office for the balance of the term to which he was appointed, January 31, 1996, and thereafter the term shall be for six (6) years.

The terms of the newly appointed members shall begin immediately upon their appointment and qualification. Each member shall hold office after the expiration of his own term until his successor has been appointed and qualified. Within fifteen (15) days after the expiration of a term, the governor shall appoint a successor and submit that appointment to the senate for confirmation. Should any member of the board resign, die, move from the district from which he was appointed, or be removed from office, the governor shall, within thirty (30) days, appoint a successor with like qualifications to serve for the remainder of the retiring member's unexpired term. If a vacancy occurs within forty-five (45) days after the convening of the legislature and the legislature is still in session, the governor shall make a nomination to fill the vacancy and submit it to the senate for their approval.

History.

I.C., § 40-303, as added by 1985, ch. 253, § 2, p. 586; am. 1995, ch. 203, § 2, p. 695.

STATUTORY NOTES

Prior Laws.

Former § 40-303 was repealed. See Prior Laws, § 40-301.

Compiler's Notes.

The phrase “the effective date of this act” in paragraphs (b), (d), and (f) of subsection (2) refers to the effective date of S.L. 1995, ch. 203, which was July 1, 1995.

§ 40-304. Oath of office — Bond. — Each member of the board shall receive a certificate of appointment from the governor, and before entering upon the discharge of his official duties shall file with the secretary of state a declaration of the political party to which the board member belongs, and the member shall also be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

History.

I.C., § 40-304, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-304 was repealed. See Prior Laws, § 40-301.

§ 40-305. Removal of board members. — The governor may remove any board member for incompetency, inefficiency, intemperance, misconduct in office, neglect or dereliction of duty. Charges in writing, setting forth fully and concisely the cause and grounds of removal, together with a citation directing the member within fifteen (15) days after the service of the charges and citation to appear and be afforded a public hearing in the office of the governor, shall be effected by delivering a copy of the charges to the member or mailing it by United States registered mail in a sealed envelope with postage fully prepaid, addressed to the member at his last address of record. The appearance may be personal or by answer, and by counsel. Service of the charges and citation shall be complete if delivered personally at the time of delivery, and if mailed at the time of deposit in accordance with the provisions of the Code of Civil Procedure relating to service by mail. A complete transcript of the hearing, including the charges, answers, exhibits and testimony and proceedings, findings, decision and order, shall be made. If the member is removed from office, the completed transcript shall within ten (10) days after the decision be filed with the secretary of state.

History.

I.C., § 40-305, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-305 was repealed. See Prior Laws, § 40-301.

§ 40-306. Compensation and reimbursement for expenses. — Each member of the board shall be compensated as provided by [section 59-509\(i\), Idaho Code](#). The compensation and expenses shall be allowed and paid from the state highway and the state aeronautic's accounts.

History.

[I.C., § 40-306](#), as added by 1985, ch. 253, § 2, p. 586; am. 1995, ch. 203, § 3, p. 695.

STATUTORY NOTES

Cross References.

State aeronautics fund, § 21-211.

State highway account, § 40-702.

Prior Laws.

Former § 40-306 was repealed. See Prior Law, § 40-301.

§ 40-307. Office of board — Organization meetings — Officers. —

The permanent offices of the board shall be maintained in Ada county, in suitable offices and quarters, with equipment, records and supplies as may be deemed necessary to carry out the provisions of this title. The members of the board shall select a vice chairman at the February meeting of each year, and the board shall adopt a seal having upon it the words, “Idaho Transportation Board — State of Idaho.” The secretary of the board shall have care and custody of the seal. The board shall appoint a secretary and fix his compensation. The secretary shall hold office subject to the pleasure of the board, and carry out administrative duties as delegated to him. For the administration of their functions the board may employ other employees and personnel as may be deemed necessary, prescribe their duties, and fix their compensation.

History.

I.C., § 40-307, as added by 1985, ch. 253, § 2, p. 586; am. 1995, ch. 203, § 4, p. 695; am. 2001, ch. 183, § 13, p. 613.

STATUTORY NOTES

Prior Laws.

Former § 40-307 was repealed. See Prior Laws, § 40-301.

§ 40-308. Meetings — Quorum. — The board shall hold not less than twelve (12) regular meetings each year, on a day of each month as the board shall determine, unless a legal holiday, then on the next ensuing business day, for the purpose of transacting business as may come before it. The chairman of the board shall preside over all meetings, except that he shall only be permitted to vote in the case of a tie vote. In the absence of the chairman, the vice chairman shall preside over meetings, except that he shall have full voting privileges. Additional regular meetings may be held as the board shall determine in its by-laws, rules and regulations. Special meetings of the board may be called at any time and from time to time by four (4) members of the board, and on the written request of the director, showing the necessity and purpose for a meeting. The board chairman may call a special meeting specifying the time, place and purpose of the meeting. The secretary shall cause due notice to be given to each member, either personally or by telephone, mail or telegraph, of the time, place and purpose of all special and regular meetings, and upon his failure so to do, notice may be given either by the chairman or the four (4) members concurring in calling any meeting. Any meeting of the board at which all of the members are present shall be as valid as if held pursuant to proper notice, and should a meeting be held without notice when all members are not present, if the absent member or members shall have signed a waiver, or shall subsequently sign the minutes of the meeting, it shall be as valid and binding as though called upon due notice. A majority of the members of the board shall constitute a quorum and a majority of all members of the board shall be necessary for the authorization of any act by the board, except as otherwise herein provided.

History.

I.C., § 40-308, as added by 1985, ch. 253, § 2, p. 586; am. 1995, ch. 203, § 5, p. 695.

STATUTORY NOTES

Prior Laws.

Former § 40-308 was repealed. See Prior Laws, § 40-301.

§ 40-309. Powers and duties — Vested powers. — The board is vested with the following functions, powers and duties:

(1) To contract fully, in the name of the state of Idaho, with respect to the rights, powers and duties vested in the board by this title.

(2) Sue and be sued in its own name.

History.

I.C., § 40-309, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law

Legal counsel.

Powers of board.

Legal Counsel.

The legislature has delegated to the Idaho board of highway directors (now transportation board) the power to hire legal counsel of its own choosing. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

Powers of Board.

The legislature had delegated to the board of highway directors (now transportation board) in former law the authority to build and maintain highways and to enter into and perform all lawful contracts for that purpose and having appropriated moneys to the board for that purpose and there being money available for the payment of plaintiff foreign corporation's claim for aerial photography work and the same having been properly approved and certified to the state auditor in proper form and the state auditor having submitted the same to the state board of examiners, that board had no power or authority to withhold its approval of the claim and it was the duty of the state auditor to issue warrant for the payment thereof. *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962).

§ 40-310. Powers and duties — State highway system. — The board shall:

(1) Determine which highways in the state, or sections of highways, shall be designated and accepted for the purpose of this title as a part of the state highway system.

(a) In determining which highways or section of highways shall be a part of the state highway system, the board shall consider the relative importance of each highway to cities, existing business, industry and enterprises and to the development of cities, natural resources, industry and agriculture and be guided by statistics on existing and projected traffic volumes. The board shall also consider the safety and convenience of highway users, the common welfare of the people of the state, and of the cities within the state and the financial capacity of the state of Idaho to acquire rights-of-way and to construct, reconstruct and maintain state highways. In making a determination, the board must, before it can abandon, relocate, or replace by a new highway, any highway serving or traversing any city, or the area in which the city is located, specifically find and determine that the benefits to the state of Idaho are greater than the economic loss and damage to the city affected. No highway serving or traversing any city shall be abandoned, relocated or replaced by a new highway serving the area in which a city is located without the board first holding a public hearing in that city. The abandonment shall proceed as set forth in [section 40-203B, Idaho Code](#).

(2) The board shall cause to be prepared and publicly displayed in a conspicuous place in their offices a complete map of the state highway system in which each section shall be identified by location, length and a control number. The map shall be of a suitable size and scale and contain data and information as deemed appropriate by the board. Periodically, and not less than once each year, the board shall revise and correct the map to record the changes in the designated state highway system resulting from additions, abandonments and relocations. Hand maps of the state highway system shall be issued periodically for public distribution.

(3) Abandon the maintenance of any highway and remove it from the state highway system, when that action is determined by the unanimous consent of the board to be in the public interest.

(4) Locate, design, construct, reconstruct, alter, extend, repair and maintain state highways, and plan, design and develop statewide transportation systems when determined by the board to be in the public interest.

(5) Establish standards for the location, design, construction, reconstruction, alteration, extension, repair and maintenance of state highways, provided that standards of state highways through local highway jurisdictions shall be coordinated with the standards in use for the systems of the respective local highway jurisdictions. The board shall make agreements with local highway jurisdictions having within their limits state highway sections in the category described in [section 40-502, Idaho Code](#), and provide for an equitable division of the maintenance of those sections. The board may also, in the interest of economy and efficiency, arrange to have any or all of the state highway sections within local highway jurisdictions maintained by those local highway jurisdictions, the cost of the work as limited by [section 40-502, Idaho Code](#), to be reimbursed by the state.

(6) Cause to be made and kept, surveys, studies, maps, plans, specifications and estimates for the alteration, extension, repair and maintenance of state highways, and so far as practicable, of all highways in the state, and for that purpose to demand and to receive reports and copies of records from county commissioners, commissioners of highway districts, county engineers and directors of highways and all other highway officials within the state.

(7) Approve and determine the final plans, specifications and estimates for state highways and cause contracts for state highway work to be let by contract in the manner provided by law.

(8) Expend funds appropriated for construction, maintenance and improvement of state highways.

(9) Designate state highways, or parts of them, as controlled-access facilities and regulate, restrict or prohibit access to those highways to serve

the traffic for which the facility is intended.

(10) Close or restrict the use of any state highway whenever the closing or restricting of use is deemed by the board to be necessary for the protection of the public or for the protection of the highway or any section from damage.

(11) Designate main traveled state highways as through highways. The traffic on through highways shall have the right-of-way over the traffic on any other highway intersecting with it, provided, that at the intersection of two (2) through highways the board shall determine which traffic shall have the right-of-way.

(12) Furnish, erect and maintain standard signs on side highways directing drivers of vehicles approaching a designated through highway to come to a full stop before entering or crossing the through highway.

(13) Provide a right-of-way for and supervise the construction of side paths or sidewalks along regularly designated state highways outside the boundaries of incorporated cities and the expenditures for the construction of them may be made from the highway funds of the county or highway districts.

(14) Upon certification and requisition of an appropriate board, commission, governing body, or official head of any state institution and on the approval of the governor, showing the same to be necessary, construct, alter, repair, and maintain the roadways in, through, and about the grounds of state institutions. The construction, alteration, repair and maintenance shall be accomplished and paid for from the state highway account in accordance with the provisions of chapter 7, title 40, Idaho Code. This provision shall not be construed to divest any board, commission, governing body, or official head of an institution their constitutional or statutory powers.

History.

I.C., § 40-310, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 258, § 1, p. 858; am. 2013, ch. 141, § 1, p. 336.

STATUTORY NOTES

Cross References.

State highway account, § 40-702.

Amendments.

The 2013 amendment, by ch. 141, rewrote subsection (1) to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Following the amendment of this section by S.L. 2013, ch. 141, this section has a paragraph (1)(a), but no paragraph (1)(b).

CASE NOTES

Effect of adopted guidelines.

Implied powers.

Rule-making authority.

State jurisdiction.

Statutory duties.

Effect of Adopted Guidelines.

Unlike its designation of design, color, and word message, the DOT has determined that the size of a stop sign may be varied, and, in fact, should be where emphasis or visibility so requires; having adopted such a guideline, however, the department is bound to abide by it; therefore, the fact that the department erected a standard 30/30 inch stop sign at the intersection does not necessarily establish its fulfillment of its duty if, in fact, the department failed to exercise ordinary care in implementing its own policies and guidelines. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

Implied Powers.

The power to determine when and how a developer may build an encroachment is implied from the Idaho Transportation Department's (ITD) authority to regulate the design of public highways. A conditional permit allows the ITD to reserve the right to review construction plans to guarantee that applicants comply with the approved encroachment designs. The ITD's regional departments use conditional permits to enforce highway-safety

standards while assuring the applicant that he or she can develop detailed construction plans, obtain the necessary rights-of-way from other landowners, and undertake other final expenses. [Vickers v. Lowe, 150 Idaho 439, 247 P.3d 666 \(2011\)](#).

Rule-making Authority.

Where the legislature enacts a statute requiring that an administrative agency carry out specific functions, i.e., furnish, erect and maintain signs on side highways, that agency cannot validly subvert the legislation by promulgating contradictory rules; thus, although the legislature delegated some rule-making authority to the DOT to adopt specifications for a uniform system of traffic-control devices, the department was not, thereby, permitted to institute rules or policies limiting its ability to achieve its express statutory duties to place signs on side roads. [Roberts v. Reed, 121 Idaho 727, 827 P.2d 1178 \(Ct. App. 1991\)](#).

State Jurisdiction.

In a prosecution against Indian tribe member for leaving the scene of an accident and for aggravated driving under the influence, where the defendant challenged the state's jurisdiction over a section of U.S. Highway 95 that is within the boundaries of an Indian reservation, the trial court could have taken judicial notice of the "Official Highway Map" which the Idaho transportation department periodically issues and widely distributes for convenience of motorists; while these maps may not be conclusive on the subject of "principal" highways, they are reliable authority. [State v. Smith, 124 Idaho 671, 862 P.2d 1093 \(Ct. App. 1993\)](#).

Statutory Duties.

An administrative agency may not alter, modify or diminish its statutorily-imposed responsibilities, either unilaterally or through agreement with another public or private entity, absent legislative authority to do so; thus, the fact that the county highway district had assumed part of the DOT's legal obligations might affect the rights and liabilities between the department and the county highway district; however, such an agreement between these two entities does not alter the statutory duty owed by the department to the plaintiff involved in a car wreck. [Roberts v. Reed, 121 Idaho 727, 827 P.2d 1178 \(Ct. App. 1991\)](#).

The DOT alone, has an express statutory duty with respect to erecting and maintaining signs at its highways' intersections; the legislature in no way qualified this duty by the condition that the sign-placing or maintenance activities occur exclusively within boundaries of the state highway system; thus, contrary to the department's position that it was without "jurisdiction" to place and maintain signs outside of its right-of-way, the department had both the authority and an express statutory duty to do so. [Roberts v. Reed](#), 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

Where the record did not reflect that the Idaho Transportation Department (ITD) followed the statutory procedure to abandon highway where accident occurred killing plaintiff's son, even though it had not been used by the ITD for more than 30 years, a question of material fact as to whether the ITD properly abandoned such highway existed and trial court's erred in granting summary judgment for the ITD. [Dachlet v. State](#), 130 Idaho 204, 938 P.2d 1242 (1997).

Cited [Lochsa Falls, L.L.C. v. State](#), 147 Idaho 232, 207 P.3d 963 (2009); [Wylie v. State](#), 151 Idaho 26, 253 P.3d 700 (2011).

Decisions Under Prior Law

Denial of right to full use.

Discretion of department.

Legal counsel.

Mandamus proceedings.

Powers of board.

Tort liability.

Denial of Right to Full Use.

Abutting property owners in a block approaching a subway under railway tracks were not entitled to compensation or damages for being deprived of the right to the full use of the street at its level before the commencement of such construction, nor for the diversion of traffic therefrom, since the construction was a proper street use and the inconvenience incident thereto did not amount to a taking of property within the meaning of the

constitution and condemnation laws. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Discretion of Department.

Department of public works (now division of public works of the department of transportation) did not abuse its discretion in the construction of a subway under a railroad track, as respects right of abutting property owners in the block approaching the subway, where it was made to appear that 150 trains passed over the crossing of the railroad tracks and approximately 5,000 vehicles crossed over the railroad tracks on the crossing, and 1,000 pedestrians likewise crossed the tracks on such crossing per day. The purpose of the exercise of the discretion of the highway department (now division of highways of the department of transportation) being the elimination of the grade crossing, abutting property owners in the block approaching said crossing were not entitled to compensation for, or an injunction against the diversion of traffic therefrom. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Legal Counsel.

Former law that provided that transportation board should determine state highway system and provide procedure for public's questions and protests concerning such determination contemplated the need of legal counsel to represent the highway board (now transportation board), and constituted a legislative recognition of the authority granted by law providing for powers and duties of board to employ counsel. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

Mandamus Proceedings.

In proceedings for a writ of mandamus by a highway district against the commissioner of public works and director of highways to compel the state to maintain a portion of the state highway within the district, and where it was admitted that the district had cooperated in construction of the highway, under an agreement between the state and the highway district, the district was not required, in order to maintain its action, to produce the alleged agreement for joint construction. *Murtaugh Hwy. Dist. v. Merritt*, 59 Idaho 603, 85 P.2d 685 (1938).

Powers of Board.

The legislature delegated to the board of highway directors (now transportation board) the authority to build and maintain highways and to enter into and perform all lawful contracts for that purpose and having appropriated moneys to the board for that purpose and there being money available for the payment of plaintiff foreign corporation's claim for aerial photography work and the same having been properly approved and certified to the state auditor in proper form and the state auditor having submitted the same to the state board of examiners, that board had no power or authority to withhold its approval of the claim and it was the duty of the state auditor to issue warrant for the payment thereof. *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962).

Landscaping involves architectural and engineering questions and, as such, were included in the power of the board of highway directors (now transportation board) to make decision involving the design and construction of state highways. *City of Boise City v. Idaho Bd. of Hwy. Dirs.*, 94 Idaho 302, 486 P.2d 1015 (1971).

Tort Liability.

The highway department (now division of highways of the department of transportation) was subject to liability for harm caused to persons lawfully using the highways for the purposes intended when the department created or maintained a dangerous condition on the highway if it knew or by exercise of reasonable care would discover such condition, should have realized that the condition involved an unreasonable risk of harm to those using the highways, should have expected that persons using the highway would not discover or realize danger, failed to exercise reasonable care to make the condition safe or to adequately warn of the condition and the risk involved, and persons using the highway did not know or have reason to know of the condition and attendant risks. *Smith v. State*, 93 Idaho 795, 473 P.2d 937 (1970).

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 190 et seq.

§ 40-311. Powers and duties — Property. — The board shall:

(1) Purchase, exchange, condemn or otherwise acquire, any real property, either in fee or in any lesser estate or interest, rights-of-way, easements and other rights and rights of direct access from the property abutting highways with controlled access, deemed necessary by the board for present or future state highway purposes. The order of the board that the land sought is necessary for such use shall be prima facie evidence of that fact.

(2) Cooperate with and receive donations and aid from private sources in the form of improvements to state owned property.

(3) Purchase, lease or otherwise acquire and develop lands for the purpose of securing highway making materials, and purchase, lease or otherwise acquire mill and factory sites and construct, equip and operate mills and factories for the reduction and manufacture of highway making materials.

(4) Sell, exchange, or otherwise dispose of and convey, in accordance with law, any real property, other than public lands which by the constitution and laws of the state of Idaho are placed under the jurisdiction of the state land board, or parts of them, together with appurtenances. When in the opinion of the board the real property and/or appurtenances are no longer needed for state highway purposes, dispose of any surplus materials and by-products from the real property and appurtenances.

(5) Make a lump sum payment with funds available for acquisition, when irrigable lands served or to be served by an irrigation works and system of an organization, whether incorporated or unincorporated, existing for the purpose of furnishing water for irrigation, are acquired by the board. The cost and expense of the acquisition of those lands for highway purposes shall be in an amount sufficient to pay the pro rata share of the organization's indebtedness, if any, including the organization's indebtedness to the United States or any public or private lending agency, allocable to the lands acquired by the board, together with interest on the pro rata share of the indebtedness in the event the indebtedness shall not be callable in advance of maturity. If the lands acquired by the board and the

construction of a highway on those lands shall intersect the irrigation works and system of the organization, then a further sum shall be paid the organization sufficient for the value of the property acquired by the board, and the severance damage to the irrigation works and system, including the damage resulting from the interference and impairment of the operation of the works and system.

History.

[I.C., § 40-311](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

State land board, Idaho [Const., Art. IX, § 7](#) and [§ 58-101](#).

CASE NOTES

Scope of Valuation.

The director of the Idaho transportation board had the power to sign an accelerated condemnation order on behalf of the board. The accelerated condemnation was properly conducted where the condemned property was valued relative to use as part of a highway widening and interchange; the valuation was not required to include potential increase in value from an unrelated proposed road extension project. [State DOT v. HJ Grathol, 153 Idaho 87, 278 P.3d 957 \(2012\)](#).

Decisions Under Prior Law

[Condemnation proceeding.](#)

— [Intervention.](#)

[Eminent domain.](#)

Condemnation Proceeding.

Where a part of the owner's contiguous land was taken in a condemnation proceeding, all inconveniences resulting to the owner's remaining land, including an easement or access to a road or right of way formerly enjoyed, which decreased the value of the land retained by the

owner, were elements of severance damage for which compensation should be paid. *State ex rel. Rich v. Fonburg*, 80 Idaho 269, 328 P.2d 60 (1958).

The state was authorized by § 7-701 and former law providing for powers and duties of the transportation board to condemn land to be used for a limited access highway and acquire the fee title to privately owned property, limiting or curtailing entry of an adjoining landowner which would ordinarily be appurtenant to the land not taken. *State ex rel. Rich v. Fonburg*, 80 Idaho 269, 328 P.2d 60 (1958).

— Intervention.

Highway district was a proper party and may intervene in a case where it was sought to condemn lands within its boundaries. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Eminent Domain.

The power of eminent domain extends to every kind of property authorized by law within the jurisdiction of the state, when taken for a public use, including the right of access to and from a public highway. *State ex rel. Rich v. Fonburg*, 80 Idaho 269, 328 P.2d 60 (1958).

§ 40-312. Powers and duties — Rules and regulations. — The board shall:

(1) Prescribe rules and regulations affecting state highways and turnpike projects and enforce compliance with those rules and regulations.

(2) Establish rules and regulations for the expenditure of all moneys appropriated or allotted by law to the department or the board. The board shall cooperate with the counties and highway districts in the expenditure of funds and shall establish a uniform system of accounting in the expenditure of moneys and a uniform method for allocation of funds by counties and highway districts as shall be necessary in the construction and maintenance of highways by counties and districts in cooperation with the state and the United States, or either, but the initiatory power of expenditure of any of those moneys shall rest with the county or district in which expenditure of the moneys mentioned is to be made.

(3) Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of facilities of any utility or communication transmitting entity, in, on, along, over, across, through or under any project on the federal-aid primary or secondary systems or on the interstate system, including extensions within urban areas. Whenever the board shall determine, after notice and opportunity for hearing, that it is necessary that any facilities which now are, or hereafter may be, located in, on, along, over, across, through or under any federal-aid primary or secondary system or on the interstate system, including extensions within urban areas, should be relocated, the utility owning or operating the facilities shall relocate them in accordance with the order of the board. In case of any relocation of facilities, the utility owning or operating the facilities, its successors or assigns, may maintain and operate the facilities, with the necessary appurtenances, in the new location or locations.

(4) Prescribe and enforce regulations for the erection and maintenance of advertising structures permitted by sections 40-1909, 40-1913 and 40-1914, Idaho Code, designed to protect the safety of the users of the highway and otherwise to achieve the objectives set forth in [section 40-1903, Idaho Code](#), and consistent with the national policy set forth in [23 U.S.C. 131](#) and

the national standards promulgated by the secretary of transportation. The board shall not prescribe or enforce rules or regulations that are more restrictive than those authorized under [23 U.S.C. 131](#). Proceedings for review of any action taken by the board pursuant to this section shall be instituted under the provisions of chapter 52, title 67, Idaho Code.

(5) Prescribe rules and regulations to implement the provisions of chapter 20, title 40, Idaho Code, and other rules and regulations relating to relocation assistance as may be necessary under existing federal laws and rules and regulations promulgated thereunder. Rules and regulations shall include provisions relating to:

(a) Standards for decent, safe and sanitary dwellings;

(b) Eligibility of displaced persons for relocation assistance payments, procedural methods whereby persons may make application for and claim payments and the amounts of them; and

(c) Other rules and regulations consistent with the provisions of chapter 20, title 40, Idaho Code, as are considered necessary or appropriate to carry out the provisions of that chapter.

(6) Establish by rule a statewide comprehensive plan for public transportation.

(7) Prescribe rules and regulations to encourage the use of recycled materials in highway construction and repair projects.

History.

[I.C., § 40-312](#), as added by 1985, ch. 253, § 2, p. 586; am. 1992, ch. 149, § 3, p. 447; am. 1992, ch. 337, § 1, p. 1008; am. 2014, ch. 97, § 24, p. 265.

STATUTORY NOTES

Amendments.

This section was amended by two 1992 acts which appear to be compatible and have been compiled together.

Both amendments added a different subsection (6). The amendment by S.L. 1992, ch. 149, § 3 was compiled as subsection (6). The amendment by

S.L. 1992, ch. 337, § 1 was designated as subsection (7) through the use of brackets.

The 2014 amendment, by ch. 97, made the temporary renumbering of the amendment by S.L. 1992, ch. 337, § 1 permanent.

CASE NOTES

Cited *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Decisions Under Prior Law

Relocation of Utilities.

It was unconstitutional for the state to pay compensation to utilities ordered to relocate their facilities located on public highways, since utilities acquire no permanent property right to the use of public highways, but a permissive use only; therefore, such payment was prohibited by the constitutional limitations of Idaho Const., Art. VII, § 17, and Idaho Const., Art. VIII, § 2. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

§ 40-313. Powers and duties — Beautification and information. —
The board shall:

(1) Furnish, erect and maintain, whenever necessary for public safety and convenience, suitable signs, markers, signals and other devices to control, guide and warn pedestrians and vehicular traffic entering or traveling upon the state highway system.

(2) Forbid, restrict or limit the erection of unauthorized signs, billboards or structures on the right-of-way of any state highway, and remove therefrom and destroy any unauthorized signs existing on them.

(3) Acquire, maintain and improve areas adjacent to highways on the state highway system for the restoration, preservation, and enhancement of scenic beauty, for use as informational sites, and for rest and recreation of the traveling public. The areas shall be parallel to and contiguous with the highway and shall not exceed a width of one thousand (1,000) feet from the adjacent right-of-way line. The board may acquire these areas in fee, easement, or other interest as may be determined by the board to be reasonably necessary to accomplish the purposes of chapter 15, title 40, Idaho Code. Such acquisition is declared to be for a highway use, and may be by gift, purchase, exchange or eminent domain, and if the latter be necessary, it shall be carried out in the same manner as now provided by law for acquisition of right-of-way for state highways.

(4) Screen, if feasible, any junkyard lawfully in existence on March 20, 1967, which are within one thousand (1,000) feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway on the interstate or primary system and not located within an industrial area, zoned or unzoned. The responsibility of the board for screening junkyards is limited to the size of the junkyards and height of storage existing as of March 20, 1967. Any screening, after March 20, 1967, required by an increase in the size of the junkyard or the height of the storage in it shall be the responsibility of the owner and will be done at his expense. The board is authorized to acquire by purchase, gift or the power of eminent domain the lands or interest in lands as may be necessary to provide adequate screening of junkyards, but eminent domain proceedings may not be undertaken to

obtain adjacent lands unless they are owned by the owner of the junkyard or the lands of the junkyard are inadequate for this purpose. When the board determines that the topography of the land will not permit adequate screening of junkyards within one thousand (1,000) feet of the nearest edge of the right-of-way of the highway on the interstate or primary system or the screening of the junkyards would not be economically feasible, the board must acquire by gift, purchase or the power of eminent domain, any interests necessary to secure the removal or disposal of the junkyard.

History.

I.C., § 40-313, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Rule-making authority.

Statutory duties.

Rule-making Authority.

Where the legislature enacts a statute requiring that an administrative agency carry out specific functions, i.e., furnish, erect and maintain signs on side highways, that agency cannot validly subvert the legislation by promulgating contradictory rules; thus, although the legislature delegated some rule-making authority to the DOT to adopt specifications for a uniform system of traffic-control devices, the department was not, thereby, permitted to institute rules or policies limiting its ability to achieve its express statutory duties to place signs on side roads. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

Statutory Duties.

An administrative agency may not alter, modify or diminish its statutorily-imposed responsibilities, either unilaterally or through agreement with another public or private entity, absent legislative authority to do so; thus, the fact that the county highway district had assumed part of the DOT's legal obligations might affect the rights and liabilities between the department and the county highway district; however, such an agreement between these two entities does not alter the statutory duty owed by the

department to the plaintiff involved in a car wreck. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

The DOT, alone, has an express statutory duty with respect to erecting and maintaining signs at its highways' intersections; the legislature in no way qualified this duty by the condition that the sign-placing or maintenance activities occur exclusively within boundaries of the state highway system; thus, contrary to the department's position that it was without "jurisdiction" to place and maintain signs outside of its right-of-way, the department had both the authority and an express statutory duty to do so. *Roberts v. Reed*, 121 Idaho 727, 827 P.2d 1178 (Ct. App. 1991).

Cited *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Decisions Under Prior Law

Unauthorized Signs.

The authority granted by former law that forbade erection on highways of billboards or signs carried with it the duty and power to determine what constitutes such an obstruction and such a determination made by the board was conclusive in the absence of a showing of arbitrary exercise of this authority or an abuse of discretion. *State ex rel. Burns v. Kelly*, 89 Idaho 139, 403 P.2d 566 (1965).

§ 40-314. Powers and duties — Departmental. — The board shall:

(1) Establish departmental internal structures deemed necessary for the full and efficient administration of this title.

(2) Exercise exclusive control over the employment, promotion, reduction, dismissal and compensation of all employees of the department.

(3) Exercise any other powers and duties, including the adoption of rules and regulations, deemed necessary to fully implement and carry out the provisions of this title and the control of the financial affairs of the board and the department.

History.

I.C., § 40-314, as added by 1985, ch. 253, § 2, p. 586.

§ 40-315. Powers and duties — Federally-funded highway project financing. — (1) In order to address the increasing need for timely improvements to Idaho's highway transportation infrastructure, the board may:

(a) Enter into agreements with the Idaho housing and finance association in connection with the funding of highway transportation projects qualifying for reimbursement from federal funds.

(b) Approve and recommend federal highway transportation projects to the Idaho housing and finance association for financing by the association. Such federal highway transportation projects shall be eligible for federal-aid debt financing under chapter 1, title 23, United States Code, and approval by the federal highway administration as an advanced construction (AC) project thereunder. The board shall select and designate such transportation projects to be funded with bond proceeds from the following list of eligible projects: ROUTE PROJECT DESCRIPTION

US-95 SH-1 to Canadian border

US-95 Garwood to Sagle

US-95 Worley to Setters

US-95 Thorn Creek to Moscow

US-95 Smokey Boulder to Hazard Creek SH-16 Ext I-84 to South Emmett

I-84 Caldwell to Meridian

I-84 Orchard to Isaacs Canyon

US-93 Twin Falls alternate route and new Snake River crossing SH-75 Timmerman to Ketchum

US-20 St. Anthony to Ashton

US-30 McCammon to Soda Springs

(c) On and after July 1, 2008, all allocations of GARVEE bond proceeds shall be the sole responsibility and duty of the Idaho transportation board. The legislature shall have authority to approve a total GARVEE bond amount on an annual basis. However, the Idaho transportation board is directed to allocate bond revenue only among the projects listed in subsection (1)(b) of this section. In making its funding allocation for projects, the board shall take into consideration: the cost of the project and whether or not that project could be financed without bonding; whether the project is necessary to facilitate the traffic flow on vital transportation corridors; and whether the project is necessary to improve safety for the traveling public. On and after July 1, 2008, the board shall use due care in selecting projects for bonding and shall balance and coordinate the use of bonding with the use of highway construction moneys.

Notwithstanding the provisions of subsection (1)(b) of this section wherein eligible projects are listed for selection and designation by the board, if any of the designated projects are deemed to be ineligible by the board, the board shall have the authority to replace those projects with other projects listed in subsection (1)(b) of this section.

(2) Prior to issuance by the Idaho housing and finance association of any bonds or notes to finance highway transportation projects, the board shall certify to the association that sufficient federal transportation funds are available to make any payments required for such bonds or notes.

(3) The board shall limit annual, total cumulative debt service and other bond-related expenses as follows: (a) In the 2006 legislative session for the fiscal year 2007 budget, total cumulative debt service and other bond-related expenses on federally-funded highway project financing shall be no more than twenty percent (20%) of annual federal-aid highway apportionments.

(b) In the 2007 legislative session for the fiscal year 2008 budget, total cumulative debt service and other bond-related expenses on federally-funded highway project financing shall be no more than twenty percent (20%) of annual federal-aid highway apportionments.

(c) In the 2008 legislative session for the fiscal year 2009 budget, total cumulative debt service and other bond-related expenses on federally-

funded highway project financing shall be no more than twenty percent (20%) of annual federal-aid highway apportionments.

(d) In the 2009 legislative session for the fiscal year 2010 budget, total cumulative debt service and other bond-related expenses on federally-funded highway project financing shall be no more than twenty percent (20%) of annual federal-aid highway apportionments.

(e) In the 2010 legislative session for the fiscal year 2011 budget, total cumulative debt service and other bond-related expenses on federally-funded highway project financing shall be no more than thirty percent (30%) of annual federal-aid highway apportionments.

(f) Beginning with the 2011 legislative session for the fiscal year 2012 budget, or for any year thereafter, the thirty percent (30%) limit may be exceeded, but only by affirmative action of both the house of representatives and the senate, and with the approval of the governor.

(4) In the event the board selects and designates to be funded with bond proceeds any of the transportation projects listed in subsection (1) of this section, and prior to entering into agreements with the Idaho housing and finance association as provided herein, the Idaho transportation department, as part of its annual budget request prepared pursuant to [section 67-3502, Idaho Code](#), shall include a request for bonding authority as a separate item of its budget request. This request for bonding authority shall include a list of planned highway transportation projects to be financed with such bond financing during the next succeeding fiscal year.

(5) By June 30 of each year, the board shall submit a report to the legislature concerning projects currently under construction using the bond financing as authorized by the provisions of this section, and shall include a list of planned highway transportation projects to be financed with such bond financing during the next succeeding fiscal year.

History.

[I.C., § 40-315](#), as added by 2005, ch. 378, § 3, p. 1217; am. 2007, ch. 363, § 13, p. 1095; am. 2017, ch. 322, § 7, p. 841.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Prior Laws.

Former § 40-315, which comprised **I.C., § 40-315**, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1988, ch. 102, § 1.

Amendments.

The 2007 amendment, by ch. 363, added subsection (1)(c); and in the last paragraph in subsection (1), substituted “projects listed in subsection (1)(b) of this section” for “projects deemed eligible by the board.”

The 2017 amendment, by ch. 322, deleted “SH-16 Ext South Emmett to Mesa with connection to SH-55” immediately following “Smokey Boulder to Hazard Creek” in the listing in subsection (1)(b).

Legislative Intent.

Section 6 of S.L. 2007, ch. 363 provided “It is legislative intent that the Idaho Transportation Board direct the use of the revenue raised from the bonding authority provided in Section 1 of this act in such a manner that revenue shall be expended in a priority fashion and that the first priority of expenditures shall be for construction, followed in order of priority by expenditures for right-of-way acquisition, followed in priority by other necessary project-related costs.”

Section 8 of S.L. 2007, ch. 363 provided “It is legislative intent that the Idaho Transportation Board has the authority to adjust GARVEE bond proceeds allocated among the projects as listed in Section 2 of this act, provided that such an adjustment is necessary due to unanticipated reasons or circumstances or to accommodate federally approved alternative and innovative approaches to the overall project development process; and provided further, that no proceeds shall be used for any projects not listed in Section 2 of this act.”

Federal References.

Chapter 1 of Title 23 of the United States Code, referred to in paragraph (1)(b), is codified as **23 USCS § 101 et seq.**

Compiler’s Notes.

For more on the GARVEE transportation program, see <http://www.itd.idaho.gov/Projects/garvee/default.asp>.

The letters “AC” enclosed in parentheses so appeared in the law as enacted.

Section 16 of S.L. 2017, ch. 322 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2017, Chapter 322 became law without the signature of the governor.

§ 40-316. Powers and duties — Reports. — The board shall:

(1) Make annually, on or before December 1 of each year and at other times as the governor may require, reports in writing to the governor concerning the condition, management and financial transactions of the department.

History.

I.C., § 40-316, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Compiler's Notes.

This section was enacted with a subsection (1), but no subsection (2).

§ 40-317. Powers and duties — Cooperative efforts. — The board may:

(1) Cooperate with, and receive and expend aid and donations from, the federal government for transportation purposes and receive and expend donations from other sources for the construction and improvement of any state highway or transportation project or any project on the federal-aid primary or secondary systems or on the interstate system, including extensions of them within urban areas; and, when authorized or directed by any act of congress or any rule or regulation of any agency of the federal government, expend funds donated or granted to the state of Idaho by the federal government for that purpose, upon highways and bridges not in the state highway system.

(2) Contract jointly with counties, cities, and highway districts for the improvement and construction of state highways.

(3) Cooperate with the federal government, counties, highway districts, and cities for construction, improvement, and maintenance of secondary or feeder highways not in the state highway system.

(4) Cooperate financially or otherwise with any other state or any county or city of any other state, or with any foreign country or any province or district of any foreign country, or with the government of the United States or its agencies, or private agencies or persons, for the erecting, construction, reconstructing, and maintaining of any bridge, trestle, or other structure for the continuation or connection of any state highway across any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring any such structure and forming a boundary between the state of Idaho and any other state or foreign country, and for the purchase or condemnation or other acquisition of right-of-way.

(5) Serve as the state's representative in the designation of forest highways within the state.

(6) Negotiate and enter into bilateral agreements with designated representatives of contiguous states. Agreements may provide for the manning and operation of jointly occupied ports of entry, for the collection

of highway user fees, registration fees and taxes which may be required by law, rule and regulation. Agreements may further provide for the collection of these fees and taxes by either party state at jointly occupied ports of entry before authorization is given for vehicles to legally operate within that state or jurisdiction, and for the enforcement of safety, size and weight laws, rules or regulations of the respective states. As to the provisions of chapter 30, title 63, Idaho Code, the state tax commission is hereby authorized to enter into reciprocal agreements with other states concerning the exemption of, or taxation of, persons employed by the state of Idaho or of another state in jointly operated ports of entry. As used in this section, "jointly operated ports of entry" shall mean any state operated facility located within or without this state that employs persons that are direct employees of the state of Idaho and of another state which operates for the mutual benefit of both states.

(7) Pursuant to the authority and process defined in sections 67-2328 and 67-2333, Idaho Code, enter into agreements with authorized representatives of contiguous states for the purpose of establishing reciprocal procedures allowing the Idaho transportation department and contiguous state motor vehicle departments to collect fees for and to issue driver's licenses and identification cards to nonresident individuals in the same manner as would be issued in the individual's home state, provided that no Idaho driver's license or Idaho identification card may be issued to a nonresident of the state of Idaho and that any reciprocal agreement under this provision shall otherwise be consistent with the driver license compact, chapter 20, title 49, Idaho Code.

(8) Enter into all contracts and agreements with the United States government in the name of the state of Idaho, relating to the survey, construction and maintenance of roads, under the provisions of any act of congress including county and city highways, and submit a program of construction and maintenance as may be required by the United States government or any of its agencies, and do all other things necessary to cooperate and complete those programs.

History.

I.C., § 40-317, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 99, § 1, p. 277; am. 1989, ch. 273, § 1, p. 660; am. 1994, ch. 280, § 2, p. 867; am.

2013, ch. 258, § 1, p. 634; am. 2014, ch. 97, § 25, p. 265.

STATUTORY NOTES

Cross References.

State tax commission, Idaho **Const., Art. VII, § 12** and **§ 63-101** et seq.

Amendments.

The 2013 amendment, by ch. 258, added present subsection (7) and redesignated former subsection (7) as subsection (8).

The 2014 amendment, by ch. 97, corrected a typographical error and made minor stylistic changes in subsections (1) and (6).

Effective Dates.

Section 8 of S.L. 1994, ch. 280 provided that §§ 1, 3, 4 and 5 of this act shall be in full force and effect on and after July 1, 1994. Sections 2, 6 and 7 of this act shall be in full force and effect on and after July 1, 1995.

§ 40-318. Limitation of political activity. — (1) No officer or employee of the department or board shall:

(a) Use his official authority or influence for the purpose of interfering with an election to or a nomination for office, or affecting the result thereof; (b) Directly or indirectly coerce, attempt to coerce, command, or direct any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes; or (c) Be a candidate and hold elective office in any partisan election.

(2) All such officers and employees shall retain the right to:

(a) Register and vote in any election;

(b) Express an opinion as an individual privately and publicly on political subjects and candidates; (c) Display a political picture, sticker, badge, or button;

(d) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; (e) Be a member of a political party or other political organization and participate in its activities; (f) Attend a political convention, rally, fund-raising function, or other political gathering; (g) Sign a political petition as an individual;

(h) Make a financial contribution to a political party or organization; (i) Take an active part in support of a candidate in an election; (j) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; (k) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; (l) Be a candidate and hold elective office in any nonpartisan election; (m) Take an active part in political organization management; and (n) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality,

efficiency, or integrity of the officer's or employee's administration of state functions.

History.

I.C., § 40-318, as added by 1990, ch. 356, § 2, p. 964.

STATUTORY NOTES

Prior Laws.

Former § 40-318, which comprised I.C., § 40-317, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1990, ch. 356, § 1, effective April 10, 1990.

Effective Dates.

Section 3 of S.L. 1990, ch. 356 declared an emergency. Approved April 10, 1990.

§ 40-319. Good faith of state pledged to appropriation. — For the construction and maintenance of highways as may be eligible for federal aid funds, excepting turnpike projects, the good faith of the state is pledged to make available funds which combined with funds made available by counties, highway districts and cities sufficient to match funds made available to the state of Idaho by the United States government for highway purposes and for the purpose of evidencing good faith, the board in the name of the state, is authorized to enter into any and all agreements with the United States government under rules and regulations approved by the United States government or any of its agencies.

History.

I.C., § 40-319, as added by 1985, ch. 253, § 2, p. 586.

§ 40-320. State highway construction and right-of-way costs borne by state — Exceptions. — All costs of constructing, reconstructing and acquiring rights-of-way for highways in the state highway system shall be borne by the state. However, when a county or incorporated city in which a state highway is located, or is to be located, desires a higher standard of construction or reconstruction than is planned, the county or city may, with the approval of the board, pay the additional cost.

History.

I.C., § 40-320, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law Power to Contract.

Highway district could enter into joint contract with state and United States for construction of road and apportionment of cost. *Grangeville Hwy. Dist. v. Ailshie*, 49 Idaho 603, 290 P. 717 (1930).

§ 40-321. Commercial enterprises on prohibited access highways prohibited — Exception — Connecting service highways. — No commercial enterprise or activity for serving motor vehicle users, other than emergency services for disabled vehicles and vending machines permitted under the provisions of federal law or federal rule and [section 67-5411, Idaho Code](#), and board right-of-way use permit shall be conducted within or on any property designated as, or acquired for, or in connection with a prohibited access highway, as designated by the Idaho transportation board. However, the board may construct on that property, at locations it deems appropriate, connecting service highways parallel to the prohibited access highways in such manner as to facilitate the establishment and operation of commercial enterprises for serving motor vehicle users on private property abutting those service highways.

History.

[I.C., § 40-321](#), as added by 1985, ch. 253, § 2, p. 586.

§ 40-322. Directive on implementation of the federal REAL ID act of 2005. — (1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID act of 2005, as part of public law 109-13, was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the constitution of the United States. The legislature reaffirms this position, while acknowledging that failure to implement certain provisions could adversely affect Idaho's citizens and businesses. Furthermore, it is the intent of the legislature to continue to protect the privacy and security of the state's residents.

(2) The legislature hereby declares that the state of Idaho shall:

(a) Meet the requirements for driver's licenses and identification cards, as described in title II of the REAL ID act of 2005, as such requirements existed on January 1, 2016;

(b) Not comply with any additional requirements enacted after January 1, 2016, without the express statutory approval of the Idaho state legislature;

(c) Submit compliance extension requests and status reports for the purposes outlined in paragraph (a) of this subsection to the United States department of homeland security.

(d) At such time as the Idaho transportation board and the Idaho transportation department achieve approval by the department of homeland security for issuance of REAL ID compliant driver's licenses and identification cards, any applicant for an Idaho driver's license or identification card shall be offered the option of obtaining a REAL ID compliant license or identification card or an Idaho driver's license or identification card that is not REAL ID compliant. In offering an applicant the option of a REAL ID compliant or REAL ID noncompliant driver's license or identification card, the department shall provide the applicant with written information of the following for both REAL ID compliant and noncompliant driver's licenses and identification cards:

(i) The purposes for which REAL ID compliant and noncompliant driver's licenses and identification cards are valid;

(ii) What types, if any, of electronic copies of source documents will be retained by the department for REAL ID compliant and noncompliant driver's licenses and identification cards;

(iii) Whether facial image capture will be retained by the department, even if a driver's license or identification card is not issued, for REAL ID compliant and noncompliant driver's licenses and identification cards; and

(iv) Any other information the department deems necessary to inform the applicant about REAL ID compliant and noncompliant driver's licenses and identification cards.

(3) This act shall be construed as to allow the Idaho transportation board and the Idaho transportation department to take reasonable and necessary steps to enhance the security of Idaho state driver's licenses and identification cards to ensure their acceptance for commercial airline travel within the United States.

(4) Beginning January 1, 2016, the department shall report to the senate transportation committee and the house of representatives transportation and defense committee on the acceptance of compliance extension requests and status reports to the United States department of homeland security, as set forth in subsection (2) of this section. Such report shall be submitted concurrently with the department's report on progress the department is making toward upgrading and implementing the division of motor vehicles' automated system. Such report shall be submitted no later than January 1 of each year through 2020, unless extended or revoked by the legislature.

History.

I.C., § 40-322, as added by 2008, ch. 385, § 2, p. 1060; am. 2015, ch. 42, § 1, p. 94; am. 2016, ch. 228, § 1, p. 625; am. 2017, ch. 175, § 1, p. 405.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 42, in subsection (2), inserted "except to submit compliance extension requests and status reports to the United States department of homeland security" in the first and second sentences;

in subsection (3), inserted “and necessary” following “reasonable” and added “to ensure their acceptance for commercial airline travel within the United States” at the end; and added subsection (4).

The 2016 amendment, by ch. 228, rewrote this section, lifting the moratorium REAL ID.

The 2017 amendment, by ch. 175, added paragraph (2)(d).

Federal References.

The REAL ID act of 2005 is Division B of [P.L. 109-13](#), which is codified as [8 USCS §§ 1101, 1157 to 1159, 1182, 1184, 1227, 1229a, 1231, 1252, 1356](#) and [18 USCS § 1028](#).

Compiler’s Notes.

Section 1 of S.L. 2008, ch. 385 provided “The Second Regular Session of the Fifty-ninth Idaho Legislature hereby finds that:

“(1) In May of 2005, the U.S. Congress enacted the REAL ID Act of 2005 as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act ([Public Law 109-13](#)), which was signed by President George W. Bush on May 11, 2005, and which becomes fully effective May 11, 2008; and

“(2) Some of the provisions of the REAL ID Act require states to:

“(a) Issue a driver’s license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

“(b) Verify the issuance, validity and completeness of all primary documents used to issue a driver’s license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

“(c) Provide for secure storage of all primary documents that are used to issue a federally approved driver’s license or state identification card;

“(d) Provide fraudulent document recognition training to all persons engaged in issuing driver’s licenses or state identification cards; and

“(e) Issue a driver’s license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

“(3) Use of the federal minimum standards for state driver’s licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including social security; and

“(4) Some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver’s license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold or otherwise used for purposes that were never intended or that are criminally related, than if the REAL ID Act had not been enacted; and

“(5) These potential breaches in privacy that could result directly from compliance with the REAL ID Act may violate the right to privacy of thousands of residents of Idaho; and

“(6) The U.S. Department of Homeland Security has estimated the cost to implement the REAL ID Act to be \$3.9 billion to the states and \$5.8 billion to individuals, of which the U.S. Congress has pledged only \$81.3 million, or less than 1% of the total cost; and

“(7) For all these reasons, seventeen states passed legislation opposing the REAL ID Act in 2007, including Idaho, which passed House Joint Memorial No. 3 declaring refusal to participate in the REAL ID program; and

“(8) The regulations that have been adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act were issued in January of 2008, and pushed compliance with the REAL ID Act to 2014 for individuals born after 1964, and to 2017 for individuals

born before 1964, undercutting any security rationale that might have existed for the original act; and

“(9) The final regulations promulgated by the U.S. Department of Homeland Security fail to address the well known privacy problems with the REAL ID Act and in some cases, such as the issue of whether the machine-readable zone as encrypted may have exacerbated the problem; and

“(10) The federal government has been ineffective in stopping illegal immigration, resulting in millions of persons who are present in the United States of America without authorization; and

“(11) Securing our borders will greatly reduce the number of persons who enter our country without authorization and will do far more to provide security to our society than will increasing scrutiny on law-abiding American citizens by way of the REAL ID program; and

“(12) The mandate to the states, through federal legislation that provides no funding for its requirements, to issue what is, in effect, a national identification card, appears to be an attempt to ”commandeer“ the political machinery of the states and to require them to be agents of the federal government in violation of the principles of federalism contained in the [10th Amendment to the Constitution of the United States](#) as construed by the [United States Supreme Court in New York v. United States, 488 U.S. 1041 \(1992\)](#), [United States v. Lopez, 514 U.S. 549 \(1995\)](#), and [Printz v. United States, 521 U. S. 898 \(1997\)](#).”

Section 3 of S.L. 2008, ch. 385 provided that the act should take effect on and after July 1, 2008. Section 3 of S.L. 2008, ch. 385 further provided that if the United States Department of Homeland Security revises its final administrative regulation, [6 CFR Part 37](#), relating to the REAL ID, and the Governor of the State of Idaho subsequently determines that such revised final regulation is acceptable to the State of Idaho, by Executive Order the Governor may initiate implementation of REAL ID during the 2008 interim, notwithstanding the provisions of [Section 40-322, Idaho Code](#). However, continued implementation of REAL ID shall be subject to the approval by the members of the First Regular Session of the Sixtieth Idaho Legislature. Such legislative approval shall be evidenced by the repeal of [Section 40-322, Idaho Code](#).

The words “this act”, as used in subsection (3), refer to S.L. 2008, Chapter 385, which appears in this section and in the notes thereto.

Effective Dates.

Section 2 of S.L. 2015, ch. 42 declared an emergency. Approved March 11, 2015.

RESEARCH REFERENCES

Idaho Law Review. — Sound and Fury, Signifying Nothing: Nullification and the Question of Gubernatorial Executive Power in Idaho, Comment. 49 Idaho L. Rev. 659 (2013).

Chapter 4

IDAHO TURNPIKE AUTHORITY

Sec.

40-401. Turnpike projects.

40-402. Identification of turnpike projects.

40-403. Incidental powers — Grade separations — Relocation of public highways — Right of entry.

40-404. Feeder highways.

40-405. Tolls, fixing and collecting.

40-405A. Apportionment of funds from highway distribution account to local units of government. [Repealed.]

40-405B. Creation of local bridge inspection account — Administration. [Repealed.]

40-405C. Apportionment of costs. [Repealed.]

40-406. Trust funds.

40-407. Remedy.

40-408. Tax exemption — Turnpike projects.

40-409. Real property grants authorized — Annual report — Interest in contract penalized.

40-410. Tolls.

40-411. Power to issue bonds — Credit of state not pledged.

40-412. Bonds of board as turnpike authority.

40-413. Trust agreement.

40-414. Refunding bonds.

§ 40-401. Turnpike projects. — The board is empowered to construct, maintain, repair and operate turnpike projects at locations established by it, and shall be an instrumentality exercising public and essential governmental functions in the construction, operation and maintenance of turnpike projects.

History.

I.C., § 40-401, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former §§ 40-401 to 40-403, which comprised S.L. 1939, ch. 16, §§ 1-3, p. 33; am. 1945, ch. 40, § 1, p. 51, were repealed by S.L. 1951, ch. 93, § 36, p. 165.

§ 40-402. Identification of turnpike projects. — Each specific turnpike project shall be clearly identified by an appropriate descriptive name and shall be operated as a separate enterprise. When a turnpike project is proposed by the board, it shall provide all surveys necessary to establish its economic feasibility, including the origin and destination counts, engineering surveys and other reports which may be required in order to secure adequate financing.

History.

I.C., § 40-402, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-402 was repealed. See Prior Laws, § 40-401.

§ 40-403. Incidental powers — Grade separations — Relocation of public highways — Right of entry. — (1) The board shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of those highways in order to accommodate them to the design of the grade separation. The cost of the grade separations and any damage incurred in changing and adjusting lines and grades of highways shall be ascertained and paid by the board as a part of the cost of the turnpike project.

(2) If the board shall find it necessary to change the location of any portion of any public highway, it shall cause it to be reconstructed at a location as the highway board having jurisdiction over the highway to be reconstructed shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of reconstruction and any damage incurred in changing the location of any highway shall be ascertained and paid by the board as a part of the cost of the turnpike project.

(3) Any highway affected by the construction of any turnpike project may be changed or relocated by the board in the manner provided by law for the vacation or relocation of public highways, and any damage awarded shall be paid by the board as a part of the cost of the project.

(4) The board and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purposes of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of a turnpike project, and such an entry shall not be deemed a trespass, nor shall an entry for those purposes be deemed an entry under any condemnation proceedings which may be then pending. The board shall make reimbursement for any actual damages resulting to the lands, water, and premises as a result of those activities.

History.

I.C., § 40-403, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-403 was repealed. See Compiler's notes, § 40-401.

§ 40-404. Feeder highways. — (1) The board is authorized to:

(a) Construct, repair and maintain any feeder highway which in the opinion of the board will increase the use of a turnpike project to which the highway is a feeder; (b) Assume maintenance and repair operations of an existing highway which is needed as a feeder highway. Before exercising these powers, consent of local authority exercising jurisdiction over the existing highway must be obtained; and (c) Realign an existing highway and build additional sections of highway over new alignment in connection with the existing highway.

(2) Where a feeder highway is constructed over new alignment, the board is granted the same powers concerning construction as is granted in connection with the construction of the turnpike project. Any feeder highway, eighty per cent (80%) or more of which is built over new alignment, shall for the purposes of this section be deemed to be a new feeder highway.

(3) Where the board has constructed a new feeder highway, it shall have the obligation to maintain and repair the new feeder highway.

(4) No toll shall be charged for transit between points on any feeder or new feeder highway.

History.

I.C., § 40-404, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-404, which comprised 1939, ch. 16, § 4, p. 33, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-405. Tolls, fixing and collecting. — (1) The board is authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections of the project, and to contract with any person, partnership, association or corporations desiring the use of any part of the project, including the right-of-way adjoining the paved portion, for the placement of telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or for railway use, and to fix the terms, conditions, rents and rates of charge for that use.

(2) The board shall construct any gasoline service facilities which it may determine are needed on the project, and to afford users of the project a reasonable choice of motor fuels of different brands. Each gasoline service station shall be separately offered for lease upon sealed bids. Notice of the offer shall be published once a week in three (3) successive weeks in a newspaper having general circulation in the state. If acceptable bids are received, in the judgment of the board, each lease shall be awarded to the highest and best bidder, but no person shall be awarded or have the use of, nor shall motor fuel identified by trade marks, trade names or brands of any one (1) supplier, distributor or retailer of such fuel be sold at more than one (1) service station if they would constitute more than twenty-five per cent (25%) of the service stations on the entire project.

(3) No contract shall be required and no rent, fee or other charge of any kind shall be imposed for the use and occupation of any turnpike project for the installation, construction, use, operation, maintenance, repair, renewal, relocation or removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or other equipment or appliances in, on, along, over or under any turnpike project by any public utility, person or corporation paying a tax for the privilege of using the public highways or other public places in the state.

(4) Tolls shall be so fixed and adjusted as to carry out and perform the terms and provisions of any contract with or for the benefit of bondholders. Tolls shall not be subject to supervision or regulation by any other department, division, bureau, commission, board, or agency of the state.

The use and disposition of tolls and revenues shall be subject to the provisions of a resolution by the board in authorizing the issuance of bonds or of a trust agreement securing them.

History.

I.C., § 40-405, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-405, which comprised I.C., § 40-405 as added by 1984, ch. 195, § 3, p. 445, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Another former § 40-405, which comprised (1939, ch. 16, § 5, p. 33; am. 1945, ch. 133, § 1, p. 201; am. 1947, ch. 113, § 1, p. 259; am. 1950 (E.S.), ch. 83, § 1, p. 111; am. 1951, ch. 268, § 1, p. 568; am. 1955, ch. 266, § 1, p. 643; am. 1959, ch. 121, § 1, p. 263; am. 1963, ch. 355, § 1, p. 1018; am. 1972, ch. 294, § 1, p. 740; am. 1974, ch. 12, § 27, p. 61; 1980, ch. 269, § 1, p. 706; am. 1982, ch. 329, § 2, p. 834; am. 1983 (Ex. Sess.), ch. 1, § 4, p. 3 was repealed by S.L. 1984, ch. 195, § 1.

§ 40-405A. Apportionment of funds from highway distribution account to local units of government. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-405A, which comprised **I.C., § 40-405A**, as added by 1980, ch. 164, § 2, p. 351, was repealed by S.L. 1984, ch. 195, § 1.

Compiler's Notes.

This section, which comprised **I.C., § 40-405A**, as added by 1984, ch. 195, § 4, p. 445, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-709.

§ 40-405B. Creation of local bridge inspection account — Administration. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-405B, which comprised **I.C., § 40-405B**, as added by 1980, ch. 164, § 3, p. 351, was repealed by S.L. 1984, ch. 195, § 1.

Compiler's Notes.

This section, which comprised **I.C., § 40-405B**, as added by 1984, ch. 195, § 5, p. 445, was repealed by 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-703.

§ 40-405C. Apportionment of costs. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-405C, as added by 1980, ch. 164, § 4, p. 351, was repealed by S.L. 1984, ch. 195, § 1.

§ 40-406. Trust funds. — All moneys received relating to turnpike projects, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely for turnpike projects. A resolution authorizing bonds of any issue or a trust agreement securing bonds shall provide that any officer with whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the money and shall hold and apply it for the purposes of the turnpike project, subject to the resolution or as a trust agreement may provide.

History.

I.C., § 40-406, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

The following former sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-406, 40-407. 1939, ch. 16, §§ 6, 7, p. 33.

40-408. 1939, ch. 16, § 8, p. 33; am. 1974, ch. 12, § 28, p. 61.

40-409. 1939, ch. 16, § 9, p. 33.

40-410, 40-411. 1943, ch. 136, §§ 1, 2, p. 273.

40-412. 1943, ch. 136, § 3, p. 273; 1945, ch. 122, § 1, p. 189.

§ 40-407. Remedy. — The only remedy available to any holder of bonds, or any of the coupons appertaining to them, and the trustee under any trust agreement, except to the extent the rights given may be restricted by a trust agreement, shall be to the particular turnpike project account and not against the state or any of its political subdivisions. A statement to this effect shall be printed on the face of all turnpike revenue bonds and any attached coupons.

History.

I.C., § 40-407, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-407 was repealed. See Prior Laws, § 40-406.

§ 40-408. Tax exemption — Turnpike projects. — The exercise of powers for turnpike projects shall be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and the improvement of turnpike projects by the board shall constitute the performance of essential governmental functions. The board shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by it relating to turnpike projects or upon the income from them, and any turnpike project and any property acquired or used by the board, and the income from them, and the bonds issued, their transfer and the income from them, including any profit made on the sale of them, shall be exempt from all taxation.

History.

I.C., § 40-408, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-408 was repealed. See Prior Laws, § 40-406.

§ 40-409. Real property grants authorized — Annual report — Interest in contract penalized. — (1) Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the board. Each project shall also be operated by tolltakers and other operating employees as the board may in its discretion employ. Nothing contained in this chapter shall in any way affect the regular duties prescribed for state and local police officers.

(2) All political subdivisions and all public departments, agencies and commissions of the state of Idaho, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the board at its request, upon terms and conditions as the proper authorities of political subdivisions and departments, agencies and commissions of the state deem reasonable and fair, and without the necessity for advertisement, order of a court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the board, including public highways and other real property already devoted to public use.

(3) On or before December 1 each year the board shall make an annual report of its activities for the preceding fiscal year relating to turnpike projects to the governor and to the legislature. Each report shall set forth a complete operating and financial statement covering its operations during the year. The board shall cause an audit of its books and accounts to be made as required in [section 67-450B, Idaho Code](#), and the cost of audits shall be treated as a part of the cost of construction or of operation of the turnpike project.

(4) Any member, agent or employee of the board who is interested, either directly or indirectly, in any contract of another with the board, or in the sale of any property, either real or personal, to the board shall be guilty of a felony and punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than five (5) years, or by both fine and imprisonment.

History.

I.C., § 40-409, as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 387, § 9, p. 1417.

STATUTORY NOTES

Prior Laws.

Former § 40-409 was repealed. See Prior Laws, § 40-406.

§ 40-410. Tolls. — When all turnpike revenue bonds and the interest on them shall have been paid, or a sufficient amount for the payment of all bonds and the interest on them to the maturity of them, shall have been set aside for the benefit of bondholders, the board shall continue to use toll revenues as may be necessary to continue the turnpike project in satisfactory condition and repair.

History.

I.C., § 40-410, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-410 was repealed. See Prior Laws, § 40-406.

§ 40-411. Power to issue bonds — Credit of state not pledged. — (1)

The board shall have power and is authorized to issue, from time to time its negotiable notes and bonds in conformity with the applicable provisions of the uniform commercial code and [section 40-412, Idaho Code](#), in a principle [principal] amount as the board shall determine to be necessary for sufficient funds for achieving a turnpike project, establishing the reserves to secure the notes and bonds, and all other expenditures of the board incidental and necessary or convenient to carry out its powers for turnpike projects.

(2) Turnpike revenue bonds shall not be deemed to constitute a debt or liability of the state or of any political subdivision, or a pledge of the faith and credit of the state or of any political subdivision, but the bonds, unless refunded by bonds of the board, shall be payable solely from funds pledged or available for their payment. All turnpike revenue bonds and any coupons appertaining to those bonds shall contain on the face a statement to the effect that the board is obligated to pay the same, or the interest on them, only from the tolls, other revenue and proceeds of the bonds and that neither the state nor any political subdivision is obligated to pay the same or the interest on them, and that neither the faith and credit nor the taxing power of the state or any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

History.

[I.C., § 40-411](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Uniform commercial code — negotiable instruments, § 28-3-101 et seq.

Prior Laws.

Former § 40-411 was repealed. See Prior Laws, § 40-406.

Compiler's Notes.

The bracketed insertion in subsection (1) was added by the compiler to supply the probable intended word.

§ 40-412. Bonds of board as turnpike authority. — (1) The board is authorized to provide by resolution for the issuance of bonds of the board for any of its corporate purposes, including the refunding of its bonds. The principal of and the interest on any issue of bonds shall be payable solely from and may be secured by a pledge of tolls and other revenues of all or any part of the turnpike project financed in whole or in part with the proceeds of the issue or with the proceeds of bonds refunded or to be refunded by the issue. The proceeds of the bonds may be used or pledged for the payment or security of the principal of or interest on bonds and for the establishment of any or all reserves for payment or security, or for other corporate purposes as the board may authorize in the resolution authorizing the issuance of bonds or in a trust agreement securing them. The bonds of each issue shall be dated, shall bear interest at a rate, shall mature at a time not exceeding thirty (30) years from their date, as may be determined by the board and may be made redeemable before maturity, at the option of the board, at a price and under terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form of the bonds including any interest coupons to be attached, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the state. The bonds shall be signed by the chairman of the board or shall bear his facsimile signature, and the official seal of the board or a facsimile shall be impressed, imprinted, engraved or otherwise reproduced on them. The official seal or facsimile shall be attested by the secretary of the board or by other officer or agent as the board shall appoint and authorize. Any coupons attached to the bonds shall bear the facsimile signature of the chairman of the board. In the event any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Bonds issued shall have and are declared to have all the qualifications and incidents of negotiable instruments. Bonds may be issued in coupon or in registered form, or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for

the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell bonds in a manner and for a price, as it may determine to be for the best interest of the board. Neither the members of the board nor any person executing the bonds shall be personally liable on the bonds or be accountable by reason of the issuance of them.

(2) Proceeds of the bonds of each issue shall be disbursed in a manner and under restrictions, if any, as the board may provide in the resolution authorizing the issuance of the bonds or in a trust agreement securing them.

(3) Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued without obtaining consent of any department, division, bureau, commission, board or agency of the state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required.

(4) The state does agree with holders of bonds that the state will not limit or restrict rights hereby vested in the board to establish and collect charges and tolls as may be convenient or necessary to produce sufficient revenue to meet the expenses of maintenance and operation of a turnpike project and to fulfill the terms of any agreements made with holders of bonds, or in any way impair the rights or remedies or [of] holders of bonds until the bonds, together with interest are fully paid and discharged.

History.

I.C., § 40-412, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-412 was repealed. See Prior Laws, § 40-406.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to supply the probable intended word.

§ 40-413. Trust agreement. — (1) In the discretion of the board any bonds issued may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. A trust agreement or resolution providing for the issuance of bonds, subject to the provisions of [section 40-412, Idaho Code](#), may pledge or assign tolls or other revenues to which the board's right then exists or may subsequently come into existence, and moneys derived from them, and the proceeds of the bonds, but shall not convey or mortgage any turnpike project or any part of it. A trust agreement or resolution providing for the issuance of bonds may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, and not in violation of law, including covenants setting forth the duties of the board in relation to the requisition of property and the construction, improvement, maintenance, repair, operation and insurance of a turnpike project or projects, the rates of tolls and revenues to be charged, the payment, security or redemption of bonds, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of a turnpike project or projects. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish indemnifying bonds or to pledge any securities as may be required by the board. A trust agreement or resolution may set forth rights and remedies of bondholders and of the trustee, and may restrict individual rights of action by bondholders. In addition, a trust agreement or resolution may contain other provisions as the board may deem reasonable and proper for the security of bondholders. All expenses incurred in carrying out the provisions of a trust agreement may be treated as a part of the cost of the operation of the turnpike project.

(2) Any pledge of tolls, other revenues, or other moneys made by the board shall be valid and binding from the time when the pledge is made. The tolls, other revenues, or other moneys pledged and subsequently received by the board shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall

be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether the parties have notice of it.

History.

I.C., § 40-413, as added by 1985, ch. 253, § 2, p. 586.

§ 40-414. Refunding bonds. — The board is hereby authorized to provide by resolution for the issuance of refunding bonds of the board for the purpose of refunding any bonds then outstanding which shall have been issued, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the board, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project in connection with which the bonds to be refunded shall have been issued. The board is further authorized to provide by resolution for the issuance of its bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of [section 40-412, Idaho Code](#), including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds. The issuance of the bonds, the maturities and other details of them, the rights of the holders, and the rights, duties, and obligations of the board in respect of the bonds shall be governed by the provisions of this chapter insofar as they may be applicable.

History.

[I.C., § 40-414](#), as added by 1985, ch. 253, § 2, p. 586.

Chapter 5

IDAHO TRANSPORTATION DEPARTMENT

Sec.

40-501. Transportation department.

40-502. Maintenance of state highways.

40-503. Offices — Appointment — Qualifications — Compensation.

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40-505. Director — Duties and powers.

40-506. Compensation for taking certain property.

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40-513E. Designation of Vietnam veterans memorial highway.

40-513F. Designation of the Idaho medal of honor highway.

40-514. Public transportation services — Public transportation services advisory council created — Interagency working group created — Department support.

40-515 — 40-527. [Repealed.]

40-528. Federal transit administration authority.

§ 40-501. Transportation department. — An Idaho transportation department is established, and for the purposes of [section 20, article IV of the constitution](#) of the state of Idaho, is an executive department of state government. The department shall have as its head the Idaho transportation board, established by chapter 3, title 40, Idaho Code.

History.

[I.C., § 40-501](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-501, which comprised 1885, p. 162, § 17; R.S., § 870; am. 1890-1891, p. 190, § 1; am. 1893, p. 184, § 1; am. 1895, p. 143, § 1; reen. 1899, p. 127, § 1; am. 1901, p. 82, § 1; reen. R.C. & C.L., § 882; C.S., § 1312; am. 1921, ch. 161, § 3, p. 354; am. 1927, ch. 73, § 1, p. 91; I.C.A., § 39-401; am. 1943, ch. 88, § 1, p. 177, was repealed by S.L. 1985, ch. 253, § 1.

CASE NOTES

Cited [French v. Sorensen](#), 113 Idaho 950, 751 P.2d 98 (1988); [Floyd v. Bd. of Comm'rs](#), 137 Idaho 718, 52 P.3d 863 (2002).

Decisions Under Prior Law In General.

The highway department (division of highways of the department of transportation) was an administrative department of the state government and, in the absence of consent or waiver of sovereign immunity by the legislature, neither the highway department (division of highways of the department of transportation) nor any of its officers or agents could subject the state to tort liability. [Bare v. Department of Hwys.](#), 88 Idaho 467, 401 P.2d 552 (1965).

§ 40-502. Maintenance of state highways. — All state highways shall be maintained by the department at state expense, including sections of state highways located within local highway jurisdictions, except that in local highway jurisdictions where state highway sections are built to local highway jurisdictions standards, such as with curbs, sidewalks and areas available for parking and bus stops, the department shall maintain at state expense only the width of traveled way required for the movement of through highway traffic. The width of traveled way to be maintained at state expense shall not exceed the width of the traveled way of the state highways approaching the incorporated areas.

History.

I.C., § 40-502, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 258, § 2, p. 858.

STATUTORY NOTES

Prior Laws.

Former § 40-502, which comprised S.L. 1907, p. 523, §§ 1, 2; reen. R.C. & C.L., § 822a; C.S., § 1313; I.C.A. § 39-402, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

CASE NOTES

Decisions Under Prior Law

Constitutionality.

Discretionary authority.

Duty to maintain mandatory.

Limitation of liability.

Constitutionality.

Former law which, in effect, retroactively empowered the state to contract for construction of a subway was not unconstitutional as a special

law authorizing invalid acts against the state. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Discretionary Authority.

Former law that empowered the department of public works (division of public works of the department of administration) to improve, alter or extend any state highway theretofore constructed did not invest the commissioner of public works (administrator of the division of public works of the department of administration) and the director of highways with discretionary authority to refuse to maintain a section of the state highway, which had been constructed jointly by the state and a highway district within which it was located. *Murtaugh Hwy. Dist. v. Merritt*, 59 Idaho 603, 85 P.2d 685 (1938).

Duty to Maintain Mandatory.

Mandamus would lie to compel the commissioners of public works (administrator of the division of public works of the department of administration) and director of highways (now administrator of the division of highways of the department of transportation) to maintain a portion of highway which had been constructed jointly with the state. *Murtaugh Hwy. Dist. v. Merritt*, 59 Idaho 603, 85 P.2d 685 (1938).

Limitation of Liability.

Highway district was not liable for collision between plaintiff's truck and road grader negligently operated by state employees on highway maintained by state, wholly beyond the control of district. *Smith v. Lewiston Hwy. Dist.*, 49 Idaho 506, 289 P. 996 (1930).

§ 40-503. Offices — Appointment — Qualifications — Compensation. — (1) An office of the director of the Idaho transportation department is established, and the board shall appoint a director having knowledge and experience in transportation matters. The director shall serve at the pleasure of the board. The director shall not hold any other public office, nor any office in any political committee or organization, and shall devote full time to the performance of his official duties. The director shall receive compensation as the board may determine and shall be reimbursed for all actual and necessary travel and expenses incurred by him in the discharge of his official duties, not to exceed a sum approved by the board. Subject to the approval of the board, the director shall appoint a chief engineer of the department who shall serve at the pleasure of the director and the board, and who shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) An office of the chief engineer of the department is established, and the chief engineer shall be a registered professional engineer, holding a current certificate of registration in accordance with the laws of this state, or who, having those qualifications shall within nine (9) months after his appointment, qualify as a registered professional engineer in accordance with the laws of Idaho. The chief engineer shall also have had five (5) years of actual experience in highway engineering, at least three (3) of which shall have been in an administrative capacity involving the direction of a substantial technical engineering staff. The chief engineer shall not hold any other public office, nor any office in any political committee or organization, and shall devote full time to the performance of his official duties under the control and direction of the director. The chief engineer shall receive compensation and reimbursement for travel and expenses as may be established by the director.

History.

I.C., § 40-503, as added by 1985, ch. 253, § 2, p. 586; am. 2016, ch. 53, § 1, p. 149.

STATUTORY NOTES

Prior Laws.

Former § 40-503, which comprised R.C., § 882b, as added by 1911, ch. 60, § 3, p. 167; reen. C.L., § 882b; C.S., § 1314; I.C.A., 39-403; am. 1935 (2d E.S.), ch. 7, § 1, p. 15, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

Amendments.

The 2016 amendment, by ch. 53, deleted “and may be removed by the board for inefficiency, neglect of duty, malfeasance or nonfeasance in office” at the end of the second sentence in subsection (1).

§ 40-504. Director — Bond. — Before entering upon the duties of his office, the director shall swear or affirm that he holds no other public office, nor any position under any political committee or organization. The affirmation shall be filed in the office of the secretary of state. The director shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The premium on the bond shall be a charge against the state, to be audited, allowed and paid as are other claims, out of the state highway and state aeronautics accounts.

History.

I.C., § 40-504, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

State aeronautics fund, § 21-211.

State highway account, § 40-702.

Prior Laws.

The following sections comprising part of former chapter 5 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-504. C.L., § 882-B, as added by 1913, ch. 145, § 1, p. 511, reen. C.L., § 882c; C.S., § 1315; I.C.A., § 39-404.

40-505, 40-506. 1917, ch. 8, §§ 1, 2, p. 10; reen. 1919, ch. 158, part of § 1, p. 518; C.S., §§ 1316, 1317; I.C.A., §§ 39-405, 39-406.

§ 40-505. Director — Duties and powers. — The director shall be the technical and administrative officer of the board and under the board's control, supervision and direction, shall have general supervision and control of all activities, functions and employees of the department. He shall enforce all provisions of the laws of the state relating to the department, the rules and regulations of the board, and shall exercise all necessary incidental powers.

History.

I.C., § 40-505, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-505 was repealed. See Prior Laws, § 40-504.

CASE NOTES

Power.

The director of the Idaho transportation board has the power to sign an order of condemnation on behalf of the board. *State DOT v. HJ Grathol*, 153 Idaho 87, 278 P.3d 957 (2012).

§ 40-506. Compensation for taking certain property. — (1) The department is authorized to acquire by purchase, gift or condemnation, all advertising displays and any property rights pertaining to them, when those advertising displays are required to be removed under the provisions of chapter 19, title 40, Idaho Code.

(2) In any appropriation for this purpose the department shall pay compensation under existing eminent domain law only for the following: (a) The taking from the owner of a sign, display, or device of all right, title, leasehold, and interest in the sign, display or device; and (b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain signs, displays and devices on that property. Where setback easements restricting the erection of structures or advertising displays have been recorded by the state on land where those structures have been erected, the landowner of the land shall be deemed to have been fully compensated for them.

(3) In any action at law instituted by the department under this section the state shall not be required, as a prerequisite, to the taking of or appropriation to comply with section 7-704 2. or section 7-707 7., Idaho Code.

History.

I.C., § 40-506, as added by 1985, ch. 253, § 2, p. 586; am. 1997, ch. 156, § 2, p. 451; am. 2006, ch. 450, § 2, p. 1339.

STATUTORY NOTES

Prior Laws.

Former § 40-506 was repealed. See Prior Laws, § 40-504.

Amendments.

The 2006 amendment, by ch. 450, updated subsection references in subsection (3).

§ 40-507. Construction and maintenance of information centers. —

(1) The department may design, erect, authorize, supervise and maintain information centers at safety rest areas in a number and at locations as it may determine to be necessary to meet the need of safety and effectively provide information of specific interest to the traveling public.

(2) Outdoor advertising placed within information centers shall be subject to all provisions of this title and all regulations promulgated by the board pursuant to the provisions of this title.

(3) Application for a permit to place outdoor advertising within an information center shall be made on a form prescribed by the department, and all permits shall be issued for a period of at least one (1) year. The department shall charge or authorize fees for the permit and for renewal sufficient to amortize the cost of the structure within an information center upon which the outdoor advertising is placed within the expected life of the structure, and sufficient to pay for the maintenance of the structure.

(4) The department will allow posters and signs to be placed by nonprofit anti-human trafficking organizations in or around safety rest areas. The posters and signs must be at least eight and one-half by eleven inches (8 ½" x 11") in size, must be mounted as tamper and vandalism resistant, and must contain toll-free telephone numbers and/or emergency contact numbers for victims of human trafficking, including the number for the "National Human Trafficking Resource Center" and the number for the Idaho state office of crime victims advocacy. The posters and signs may include text in a variety of languages. The posters and signs will be covered by a permit if the safety rest area or turnout is part of the highway right-of-way. Posters and signs containing the aforementioned contact numbers shall have all costs for the sign, installation, and/or maintenance provided by the aforementioned nonprofit anti-human trafficking organization(s). Temporary installation permits can include a memorandum of understanding (MOU), and encroachment permit, or a special event permit. The cost of poster and sign installment and maintenance shall be covered in the permit or MOU normally at the expense of the requestor.

(5) As used in subsection (4) of this section:

(a) “Emergency contact numbers” means a hotline that is: available twenty-four (24) hours a day, seven (7) days a week; toll-free; operated by a nonprofit, nongovernmental organization; anonymous and confidential; and able to provide help, referral to services, training and general information;

(b) “Human trafficking” means the illegal movement of people, typically for the purposes of forced labor or commercial sexual exploitation;

(c) “Safety rest area” means a roadside area with restrooms and other facilities for the use of motorists.

History.

I.C., § 40-507, as added by 1985, ch. 253, § 2, p. 586; am. 2015, ch. 207, § 1, p. 635.

STATUTORY NOTES

Prior Laws.

The following sections comprising part of former chapter 5 of title 40 were repealed by S.L. 1950, ch. 87, § 24, p. 117:

40-507. 1885, p. 162, § 17; R.S., § 871; reen. R.C. & C.L., § 883; C.S., § 1318; I.C.A., § 39-407.

40-508. R.C., § 883a, as added by 1911, ch. 60, § 3, p. 168; reen. C.L., § 883a; C.S., § 1319; I.C.A., § 39-408.

40-509. 1897, p. 78, §§ 1-5; reen. 1899, p. 306, §§ 1-5; reen. R.C., § 884; am. 1911, ch. 60, § 1, p. 161; am. 1912, ch. 9, § 1, p. 45; reen. C.L., § 884; am. 1919, ch. 105, p. 371; C.S., § 1320; I.C.A., § 39-409.

Amendments.

The 2015 amendment, by ch. 207, added subsections (4) and (5).

Compiler’s Notes.

The “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2015, ch. 207 declared an emergency. Approved April 1, 2015.

§ 40-508. Traffic safety commission created — Membership. — (1)

An Idaho traffic safety commission is established within the department.

(2) The commission shall be composed of not more than fifteen (15) members appointed by the director, who shall include the chairman of the transportation and defense committee of the house of representatives of the state and the chairman of the transportation committee of the senate of the state, plus the director or his representative who shall act as chairman. Members shall be representative of state and local traffic oriented agencies, the legislature, the judiciary, and private organizations and citizen groups.

(3) The director shall employ necessary personnel, shall have general supervision and control of all activities, functions and employees, and shall enforce all provisions of the laws of the state relating to highway safety programs and administer any other activities as may be required by the federal highway safety act of 1966 and any amendments to it, and the rules and regulations of the board pertaining to it.

History.

I.C., § 40-508, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-508 was repealed. See Prior Laws, § 40-507.

Federal References.

The federal highway safety act of 1966, referred to in subsection (3), is P.L. 89-564, which is codified as 23 USCS §§ 105, 307, and 401 to 404.

§ 40-509. Duties of traffic safety commission. — The commission shall:

(1) Periodically review traffic safety problems in Idaho and develop effective plans for additional local-state cooperative activities;

(2) Recommend to the director those agency programs and political subdivision programs to receive federal aid for highway safety in accordance with uniform federal standards;

(3) Advise and recommend to the director future traffic accident prevention activities; and

(4) Carry out any other activities as may be required by the federal highway safety act of 1966 and any amendments to it.

History.

I.C., § 40-509, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-509 was repealed. See Prior Laws, § 40-507.

Federal References.

The federal highway safety act of 1966, referred to in subsection (4), is P.L. 89-564, which is codified as 23 USCS §§ 105, 307, and 401 to 404.

§ 40-510. Ports of entry or checking stations established — Motor vehicle investigator activities — Authority of the board to employ individuals. — (1) To augment and help make more efficient and effective the enforcement of certain laws of the state of Idaho, the Idaho transportation department is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Idaho, at such places as the Idaho transportation department shall deem necessary and advisable.

(2) The board is authorized to appoint and employ individuals who shall have limited peace officer authority for the enforcement of such motor vehicle-related laws as are herein specified: (a) Sections 18-3906 and 18-8001, Idaho Code;

(b) Sections 25-1105 and 25-1182(2), Idaho Code; (c) **Sections 40-510 through 40-512, Idaho Code**; (d) Chapters 1 through 5, 9, 10, 15 through 19, 22 and 24, title 49, sections 49-619, 49-660, 49-1407, 49-1418 and 49-1427 through 49-1430, Idaho Code; (e) Authorized use of motor fuel on the highways and international fuel tax agreement (IFTA) provisions of chapter 24, title 63, Idaho Code; (f) **Section 67-2901A, Idaho Code**; and (g) Sections 49-676 and 63-2425, Idaho Code.

(3) Motor vehicle investigators shall have the authority to access confidential vehicle identification number information.

(4) Any employee so appointed shall have the authority to issue misdemeanor traffic citations in accordance with the provisions of **section 49-1409, Idaho Code**, and infraction citations in accordance with the provisions of chapter 15, title 49, Idaho Code.

(5) No employee of the department shall carry or use a firearm of any type in the performance of his duties unless specifically authorized in writing by the director of the Idaho state police to do so.

(6) The board is authorized to extend the authority as provided in this section to authorized employees of contiguous states upon approval of a bilateral agreement according to the provisions of **section 40-317, Idaho Code**.

History.

1950 (E.S.), ch. 15, § 1, p. 26; am. 1953, ch. 218, § 1, p. 333; am. 1974, ch. 27, § 193, p. 811; am. 1982, ch. 95, § 140, p. 185; am. and redesign. 1991, ch. 288, § 6, p. 739; am. 1999, ch. 383, § 2, p. 1051; am. 2000, ch. 303, § 1, p. 1034; am. 2000, ch. 469, § 103, p. 1450; am. 2006, ch. 31, § 1, p. 94; am. 2015, ch. 38, § 17, p. 79; am. 2020, ch. 327, § 5, p. 943.

STATUTORY NOTES**Cross References.**

Director of Idaho state police, § 67-2901.

Prior Laws.

Former § 40-510, which comprised 1890-1891, p. 190, § 2; reen. 1899, p. 127, § 2; reen. R.C., § 885; am. 1911, ch. 60, § 1, p. 161; am. 1917, ch. 88, p. 310; reen. C.L., § 885; C.S., § 1321; I.C.A., § 39-410, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 303, § 1 added subdivision (2)(f).

The 2000 amendment, by ch. 469, § 103, near the end of subsection (5), substituted “Idaho state police” for “department of law enforcement”.

The 2006 amendment, by ch. 31, substituted “40-512” for “40-514” in subsection (2)(c).

The 2015 amendment, by ch. 38, in paragraph (2)(d), deleted “11” preceding “15 through 19”; and rewrote paragraph (2)(e), which formerly read: “Sections 63-2438, 63-2440, 63-2441 and 63-2443, Idaho Code; and”.

The 2020 amendment, by ch. 327, added paragraph (2)(g).

Compiler’s Notes.

This section was formerly compiled as § 67-2926.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2000, ch. 303 declared an emergency. Approved April 14, 2000.

CASE NOTES

Cited [State v. Hahn, 92 Idaho 265, 441 P.2d 714 \(1968\).](#)

§ 40-511. Stopping and inspection. — (1) Wherever by the laws of the state of Idaho any vehicle with a maximum gross weight or registered gross weight, or operated at a gross weight of twenty-six thousand one (26,001) pounds or more, excepting those transporting livestock or placardable quantities of hazardous materials, is used to transport any merchandise, product or commodity within the state, within the state to without the state, or from without the state to within the state, the owner or operator of either the motor vehicle or trailer, as defined in chapter 1, title 49, Idaho Code, used to transport such merchandise, product or commodity is hereby required to stop at such ports of entry or checking stations established by the Idaho transportation department and submit to inspection, grading or weighing, for compliance with the laws of the state of Idaho.

(2) Vehicles or combinations of vehicles with a maximum gross weight of ten thousand (10,000) pounds or more transporting livestock or placardable quantities of hazardous materials are required to stop at all ports of entry or checking stations established by the Idaho transportation department.

(3) It shall be the duty of such owner or operator of every motor vehicle or trailer to drive the motor vehicle or trailer upon any state owned stationary or portable scale or private scale, certified by the state of Idaho when requested to do so by any peace officer, excepting fish and game officers, or authorized employees of the Idaho transportation department.

(4) Authorized employees of the transportation department may stop any vehicle with a maximum gross weight of eighteen thousand (18,000) pounds or more by displaying a flashing red light if the authorized employee has probable cause to believe the vehicle bypassed a weighing or inspection station or proceeded through the station without regard for the directional signals. Authorized employees may direct a vehicle which has bypassed a weighing or inspection station or has proceeded through the station without regard for the directional signals, to return to the bypassed inspection or weighing station and may issue a citation for failure to stop as required in this section. The operator of a vehicle shall bring the vehicle to a stop, pulling off the traveled portion of the highway when directed to do so

by an authorized employee of the transportation department by use of emergency lights or siren.

History.

1950 (E.S.), ch. 15, § 2, p. 26; am. 1970, ch. 54, § 1, p. 133; am. 1974, ch. 27, § 194, p. 811; am. 1982, ch. 95, § 141, p. 185; am. 1988, ch. 265, § 583, p. 549; am. and redesign. 1991, ch. 288, § 7, p. 739; am. 1992, ch. 111, § 1, p. 340; am. 1997, ch. 233, § 1, p. 682; am. 1999, ch. 393, § 1, p. 1091; am. 2006, ch. 31, § 2, p. 94.

STATUTORY NOTES

Prior Laws.

Former § 40-511, which comprised 1899, p. 392, § 1; reen. R.C., § 886; am. 1911, ch. 60, § 1, p. 161; reen. C.L., § 886; C.S., § 1322; I.C.A., § 39-411, was repealed by S.L. 1950 (1st. E.S.), ch. 87, § 24, p. 117.

Amendments.

The 2006 amendment, by ch. 31, inserted “or registered gross weight, or operated at a gross weight” near the beginning of subsection (1).

Compiler’s Notes.

This section was formerly compiled as § 67-2927.

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

§ 40-512. Penalties. — Any person failing to stop at any port of entry or checking station when so required by the provisions of [section 40-511, Idaho Code](#), or, failing to submit to the inspection, grading or weighing required by any law of the state of Idaho, shall be guilty of a misdemeanor.

History.

1950 (E.S.), ch. 15, § 3, p. 26; am. 1970, ch. 54, § 2, p. 133; am. and redesign. 1991, ch. 288, § 8, p. 739.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws.

Former § 40-512, which comprised R.S., § 874; reen. R.C. & C.L., § 887; C.S., § 1323; I.C.A., § 39-412, was repealed by S.L. 1950 (1st. E.S.), ch. 87, § 24, p. 117.

Compiler's Notes.

This section was formerly compiled as § 67-2928.

CASE NOTES

Cited [State v. Hahn, 92 Idaho 265, 441 P.2d 714 \(1968\).](#)

§ 40-513. Veterans memorial centennial bridge established. — The Bennett Bay bridge located on interstate highway I-90 in Kootenai county shall be designated as the “Veterans Memorial Centennial Bridge” to honor those persons who served in the armed forces during periods of wartime as defined by congress. The transportation department shall erect suitable signs so designating the bridge as the veterans memorial centennial bridge.

History.

I.C., § 40-513, as added by 1992, ch. 105, § 1, p. 326.

STATUTORY NOTES

Prior Laws.

Former § 40-513, which comprised, (R.C., § 887a, as added by 1911, ch. 60, § 3, p. 168; reen. C.L., § 887a; C.S., § 1324; I.C.A., § 39-413), was repealed by S.L. 1950 (1st. E.S.), ch. 87, § 24, p. 117.

§ 40-513A. Designation of the I.B. Perrine Bridge. — The bridge spanning the Snake River Canyon on U.S. Highway 93 south of Interstate Highway 84 near the city of Twin Falls, Idaho, shall be designated as the “I.B. Perrine Bridge” to honor I.B. Perrine for his part as founder and father of the Twin Falls area. His dream for agriculture and his efforts to bring water to the valley set in motion the development we see today. The transportation department shall erect suitable signs so designating the bridge as the “I.B. Perrine Bridge.”

History.

I.C., § 40-513A, as added by 2000, ch. 197, § 1, p. 488.

§ 40-513B. Portion of U.S. Highway 95 designated as Stu Dopf Memorial Highway. — That portion of United States Highway 95 through the canyon between Midvale and Cambridge shall be known and designated as the “Stu Dopf Memorial Highway” in honor of the journalist who was interested in increasing the ease and safety of travel along U.S. Highway 95. The Idaho transportation department shall identify areas suitable for posting markers along that portion of U.S. Highway 95 indicating its designation as the Stu Dopf Memorial Highway.

History.

I.C., § 40-513B, as added by 2001, ch. 352, § 1, p. 1234.

§ 40-513C. Designation of purple heart trail. — That portion of interstate highway I-90 located in Idaho is the Idaho portion of the national purple heart trail. The Idaho transportation department shall design and construct signs indicating the highway number, the designation as the purple heart trail, and any other appropriate information. The department shall erect a sign at each end of the highway and markers at intermediate sites along the highway that the department determines are appropriate. The department is required to design, construct, and erect the signs and markers only to the extent that moneys are provided for this purpose through private donations, grants, awards or other moneys.

History.

I.C., § 40-513C, as added by 2008, ch. 215, § 1, p. 671.

STATUTORY NOTES

Compiler's Notes.

For more on national purple heart trail, see <http://www.purpleheart.org/PHtrail/Default.aspx>.

§ 40-513D. State highway 3 designated as North Idaho Medal of Honor Highway. — State highway 3, connecting U.S. highway 12 near Spalding with interstate 90 near Rose Lake, shall be designated as the “North Idaho Medal of Honor Highway” to honor Idahoans awarded the congressional medal of honor for their service in our armed forces. The Idaho transportation department shall identify areas suitable for posting markers along state highway 3 indicating its designation as the “North Idaho Medal of Honor Highway.”

History.

I.C., § 40-513D, as added by 2011, ch. 48, § 1, p. 114.

§ 40-513E. Designation of Vietnam veterans memorial highway. — That portion of interstate highway I-84 located in Idaho is designated as the Vietnam veterans memorial highway. The Idaho transportation department shall design and construct signs indicating the highway number, the designation as the Vietnam veterans memorial highway and any other appropriate information. The department shall erect a sign at each end of the highway and markers at intermediate sites along the highway that the department determines are appropriate. The department is required to design, construct and erect the signs and markers only to the extent that moneys are provided for this purpose through private donations, grants, awards or other moneys.

History.

I.C., § 40-513E, as added by 2014, ch. 19, § 1, p. 26.

§ 40-513F. Designation of the Idaho medal of honor highway. — That portion of U.S. highway 20 located in Idaho shall also be known as the “Idaho Medal of Honor Highway.” The Idaho transportation department shall design and construct signs indicating the designation as the “Idaho Medal of Honor Highway” and any other appropriate information. The department shall erect a sign at each end of the highway and markers at intermediate sites along the highway that the department determines are appropriate. The department is required to design, construct, and erect the signs and markers only to the extent that less than thirty thousand dollars (\$30,000) of existing dedicated funds are provided for this purpose as determined by the transportation board. Design of the signs should be similar to the signs currently erected on U.S. highway 20 at the time of enactment of this legislation. Signs shall identify the highway as the “Idaho Medal of Honor Highway” and include the three (3) different designs of the medal of honor.

History.

I.C., § 40-513F, as added by 2019, ch. 65, § 1, p. 157.

§ 40-514. Public transportation services — Public transportation services advisory council created — Interagency working group created — Department support. — (1) All state agencies except the department of education, and all public entities that use public funds to provide public transportation services within the state shall report not less often than semiannually to the department the amount of funding expended, audits conducted, the number of passengers carried, the agency vehicles used and the vehicle miles driven to provide transportation for Idaho citizens. Upon receipt of such information, the department shall:

- (a) Develop a uniform data collection and reporting system; information from said system shall be submitted annually to the joint finance-appropriations committee of the Idaho legislature; and as public information, it shall also be available upon request;
- (b) In cooperation with other state agencies and public entities, develop a comprehensive plan for public transportation; and
- (c) Provide assistance to operators of local and regional transportation systems that are consistent with public program objectives of the state plan.

(2) There is hereby created the public transportation advisory council to advise the Idaho transportation department on issues and policies regarding public transportation in Idaho. The council shall participate in planning activities, identify transportation needs, and promote coordinated transportation systems. Before setting programs and priorities, the council shall seek pertinent information, facts and data from local governments, agencies and providers regarding rural public transportation issues.

The advisory council shall be composed of six (6) members appointed by the Idaho transportation board. Appointed members shall be representatives of local governments and agencies, private organizations, citizen groups and private providers that have an interest in public transportation, and people with disabilities and the elderly who utilize public transportation. The board shall appoint said members from recommendations submitted by said organizations, groups, providers, users and state agencies in each

district. One (1) member shall be appointed from each of the six (6) transportation department director districts as provided in [section 40-303, Idaho Code](#). The term of each member shall be three (3) years and the initial appointments to the council shall be such that two (2) members shall be appointed each year thereafter.

The council is authorized to meet three (3) times per year with additional meetings as authorized by the board.

Members of the advisory council shall be reimbursed according to the provisions of [section 59-509\(g\), Idaho Code](#).

(3) The director of the Idaho transportation department together with the directors of the affected state agencies shall establish an interagency working group to advise and assist the department in analyzing public transportation needs, identifying areas for coordination, and developing strategies for eliminating procedural and regulatory barriers to coordination at the state level. The group shall undertake detailed work assignments related to transportation services which promote cooperation and collaboration among systems.

The working group shall be composed of a representative from the office of the governor and one (1) staff representative from each of the following agencies which expend public funds for transportation services or associations representing public transportation interests:

- (a) Idaho commission on aging;
- (b) Idaho head start association;
- (c) Two (2) representatives from the Idaho department of health and welfare, one (1) of whom shall represent the division of medicaid;
- (d) Idaho department of education;
- (e) Idaho transportation department;
- (f) Community transportation association;
- (g) Idaho council on developmental disabilities;
- (h) Division of vocational rehabilitation; and
- (i) Idaho department of labor, workforce development council.

Ex officio members may be appointed to the group as deemed necessary. Members of the working group representing state agencies shall be reimbursed by their respective agencies according to the provisions of [section 59-509\(b\), Idaho Code](#).

(4) The interagency working group established in subsection (3) of this section shall:

- (a) Meet at least once in each calendar quarter; and
- (b) Discuss all agenda items submitted to it by any member of the group; and
- (c) Provide notice of each meeting at least two (2) weeks in advance of the meeting; and
- (d) Annually elect a chairman from among its members; such person shall not serve consecutive terms as chairman.

(5) The department shall provide the administrative support required by the council and the interagency working group.

History.

[I.C., § 40-514](#), as added by 1992, ch. 149, § 4, p. 447; am. 1996, ch. 35, § 2, p. 88; am. 2000, ch. 417, § 2, p. 1328.

STATUTORY NOTES

Cross References.

Commission on aging, § 67-5001 et seq.

Department of education, § 33-125.

Department of health and welfare, § 56-1001 et seq.

State council on developmental disabilities, § 67-6701 et seq.

Workforce development council, § 72-1336.

Prior Laws.

Former § 40-514, which comprised R.C. § 887b, as added by 1911, ch. 60, § 3, p. 169; reen. C.L. § 887b; C.S. § 1325; I.C.A., § 39-414, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Compiler's Notes.

For more on Idaho head start association, see <http://idahoheadstartassoc.net>.

For more on medicaid in Idaho, see [http://www.healthandwelfare.idaho.gov/?Tabid= 123](http://www.healthandwelfare.idaho.gov/?Tabid=123).

For more on community transportation association of Idaho, see <http://ctai.org>.

For more on Idaho division of vocational rehabilitation, see <https://vr.idaho.gov/>.

§ 40-515 — 40-520. Highway condition report — Financial condition report — Contracts for repair of highways — Contractor's duties — Failure to perform — Allowance of contractor's claims. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections comprising part of former chapter 5 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-515. R.C., § 887c, as added by 1911, ch. 60, § 3, p. 169; reen. C.L., § 887c; C.S., § 1326; I.C.A., § 39-415; am. 1974, ch. 12, § 29, p. 61.

40-516. R.C., § 887d, as added by 1911, ch. 60, § 3, p. 169; reen. C.L., § 887d; C.S., § 1327; I.C.A., § 39-416.

40-517. 1893, p. 184, § 2; am. 1895, p. 22, § 1; reen. 1899, p. 127, § 3; am. 1907, p. 163, § 1; reen. R.C. & C.L., § 888; C.S., § 1328; I.C.A., § 39-417.

40-518. 1893, p. 184, § 2; reen. 1899, p. 127, § 16; am. 1907, p. 163, § 2; reen. R.C. & C.L., § 889; C.S., § 1329; I.C.A., § 39-418.

40-519. 1893, p. 184, § 2; reen. 1899, p. 127, § 16; am. 1907, p. 163, § 2; reen. R.C. & C.L., § 890; C.S., § 1330; I.C.A., § 39-419.

40-520. 1893, p. 184, § 2; reen. 1899, p. 127, § 16; am. 1907, p. 163, § 2; reen. R.C. & C.L., § 891; C.S., § 1331; I.C.A., § 39-420.

§ 40-521. Collection of poll tax in contract districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1893, p. 184, § 2; reen. 1899, p. 127, § 16; am. 1907, p. 163, § 2; reen., R.C. & C.L., § 892; C.S., § 1332; I.C.A., § 39-421, was repealed by S.L. 1949, ch. 39, § 1.

§ 40-522 — 40-527. Every city a road district — Powers and duties of city council or board of trustees — Sign posts, erection — Penalty for defacing or destroying — County and district boards — Cooperation with state — Sidewalks or side paths — Curb construction standards — Curb ramps for the physically handicapped. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections comprising part of former chapter 5 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-522. 1885, p. 162, § 43; R.S., § 887; am. 1895, p. 132, § 1; reen. 1899, p. 270, § 1; reen. R.C. & C.L., § 893; C.S., § 1333; I.C.A., § 39-422.

40-523. 1917, ch. 95, § 1, p. 326; reen. C.L., § 893a; C.S., § 1334; I.C.A., § 39-423.

40-524. 1917, ch. 95, § 2, p. 327; compiled and reen. C.L., § 893b; C.S., § 1335; I.C.A., § 39-424; am. 1950 (E.S.), ch. 87, § 22, p. 117; am. 1951, ch. 161, § 1, p. 356; am. 1974, ch. 12, § 30, p. 61.

40-525. 1923, ch. 181, § 1, p. 281; I.C.A., § 39-425; am. 1974, ch. 12, § 31, p. 61.

40-526. I.C.A., § 39-426, as added by 1939, ch. 112, § 1, p. 190; am. 1974, ch. 12, § 32, p. 61.

40-527. **I.C., § 40-527**, as added by 1975, ch. 210, § 1, p. 582.

§ 40-528. Federal transit administration authority. — (1) The Idaho transportation department and its director are the designated recipients for the federal transit administration funding for the rural transit program and the small urban transit program within the state of Idaho.

(2) Notwithstanding the provisions of subsection (1) of this section: (a) The department is not the designated recipient for large urbanized areas as determined and defined by the United States department of commerce, bureau of the census; and (b) The department is not the designated recipient for any qualifying urbanized area identified by the governor prior to July 1, 2011.

History.

I.C., § 40-528, as added by 2012, ch. 22, § 1, p. 77; am. 2015, ch. 244, § 24, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, corrected a punctuation error at the end of paragraph (2)(a).

Chapter 6

COUNTY COMMISSIONERS AND HIGHWAY OFFICERS

Sec.

40-601. Districts established by commissioners.

40-602. Boundaries.

40-603. County highways recommended by commissioners — Approved by board.

40-604. Duties and powers of commissioners.

40-605. Laying out of new highways — Widening, changing, or straightening existing highways — Purchase of rights-of-way by agreement.

40-606. Condemnation of rights-of-way.

40-607. County and highway district highway system construction, maintenance and right-of-way costs borne by the responsible county or highway district — Exceptions.

40-608. Record of highway proceedings.

40-609. Contracts to use dams as highways.

40-610. Report of condition of highways — Filing.

40-611. Report of financial condition — Publication.

40-612. Commissioners — Highway contracts.

40-613. Jurisdiction in adjoining counties.

40-614. Service of notice on chairman or clerk of commissioners of adjoining county.

40-615. County and district boards — Cooperation with state.

40-616. Sidewalks or side paths.

40-617. Contracts for repair of highways.

40-618. Appointment of county director of highways.

40-619. Duties and powers of county director of highways.

§ 40-601. Districts established by commissioners. — Whenever the commissioners of any county shall have caused to be described by an order made and entered upon its records any defined portion of contiguous territory, located wholly within the county, for the construction, improvement or repair of highways pursuant to the provisions of law, each defined portion of contiguous territory is recognized as a legal taxing district and body politic of this state and as a highway district for highway purposes.

History.

I.C., § 40-601, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-601, which comprised 1885, p. 162, § 20; R.S., § 880; am. 1901, p. 297, § 1; reen. R.C., § 894; am. 1911, ch. 44, §§ 1, 2, p. 101; am. 1911, ch. 60, § 1, subd. 894, p. 162; am. 1912, ch. 4, § 1, p. 8; am. 1915, ch. 52, p. 139; reen. C.L., § 894; am. 1919, ch. 185, p. 566; reen. C.S., § 1336; I.C.A., § 39-501, was repealed by S.L. 1949, ch. 39, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 146.

§ 40-602. Boundaries. — The boundaries of each highway district shall be the same as are described by metes and bounds or other legal description upon the minutes or records of the commissioners of the respective county and upon copies of those records duly certified.

History.

I.C., § 40-602, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-602, which comprised R.S., § 881; reen. R.C., § 895; am. 1911, ch. 60, § 1, subd. 895, p. 162; am. 1912, ch. 9, § 2, p. 46; reen. C.L., § 895; C.S., § 1337; I.C.A., § 39-502, was repealed by S.L. 1949, ch. 39, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 148.

§ 40-603. County highways recommended by commissioners — Approved by board. — The commissioners of each county shall recommend highways for the county highway system to the board at least once a year and in a manner and form to be prescribed by the board. All recommendations shall clearly show which highways are improved highways and which are unimproved. All recommendations must be approved by the board before they shall constitute the official highway system of the county. The board may require commissioners to submit financial and operating data as it may deem necessary to assist it in determining what highways should properly be included in the respective county highway systems.

History.

I.C., § 40-603, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 6, p. 803.

STATUTORY NOTES

Prior Laws.

Former § 40-603, which comprised R.S., § 882; reen. R.C., § 896; am. 1911, ch. 60, § 1, p. 162; reen. C.L., § 896; C.S., § 1338; am. 1921, ch. 161, § 4, p. 354; I.C.A., § 39-503, was repealed by S.L. 1985, ch. 253, § 1.

§ 40-604. Duties and powers of commissioners. — Commissioners shall:

(1) Exercise general supervision over all highways in the county highway system, including their location, design, construction, reconstruction, repair and maintenance, and develop general policies regarding highway matters.

(2) Cause to be surveyed, viewed, laid out, recorded, opened and worked, any highways or public rights-of-way as are necessary for public convenience under the provisions of sections 40-202 and 40-203A, Idaho Code.

(3) Cause to be recorded all highways and public rights-of-way within their highway system.

(4) Have authority to abandon and vacate any highway or public right-of-way within their highway system under the provisions of [section 40-203, Idaho Code](#).

(5) Designate county highways, or parts of them, as controlled-access highways and regulate, restrict or prohibit access to those highways so as best to serve the traffic for which the facility is intended.

(6) Have authority to make agreements with any incorporated city, other county, a highway district, the state, or the United States, its agencies, departments, bureaus, boards, or any government owned corporation for the construction, reconstruction, or maintenance of the county's highway system by those entities or for the construction, reconstruction, or maintenance of the highway systems of those entities by the county's highway organization. The county shall compensate or be compensated for the fair cost of the work except as otherwise specifically provided in this title.

(7) Contract, purchase, or otherwise acquire the right-of-way over private property for the use of county highways and for this purpose may institute proceedings under the code of civil procedure.

(8) Levy an ad valorem tax to be paid into the county highway fund and cause the tax collected each year to be paid into that fund and kept by the

treasurer as a separate fund. When all of the territory of a county is included in one (1) or more highway districts the commissioners shall not make any levy for general highway purposes.

(9) Audit and draw warrants on the county highway fund required for payment for rights-of-way improvement.

(10) Rename any highway within the county, excepting those situated within the territorial limits of incorporated cities, when the renaming will eradicate confusion.

(11) Cause guide posts properly inscribed to be erected and maintained on designated highways.

(12) Exercise other powers as may be prescribed by law.

[(13)](14) By July 1, 2000, and every five (5) years thereafter, the commissioners shall have published in map form and made readily available the location of all public rights-of-way under their jurisdiction. The commissioners of a district may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

History.

I.C., § 40-604, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 7, p. 803; am. 1988, ch. 117, § 1, p. 215; am. 1993, ch. 412, § 7, p. 1505; am. 1998, ch. 154, § 1, p. 528; am. 1998, ch. 184, § 2, p. 673.

STATUTORY NOTES

Prior Laws.

Former § 40-604, which comprised R.S., § 883; reen. R.C., § 897; am. 1911, ch. 60, § 1, p. 163; reen. C.L. § 897; C.S., § 1339; I.C.A., § 39-504, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

Amendments.

This section was amended by two 1998 acts — ch. 154, § 1 and ch. 184, § 2, both effective July 1, 1998, which do not conflict and have been compiled together. However, the two acts added and redesignated subsections differently. The compiler has attempted to resolve these differences by letting stand the deletion of subsection (7) of ch. 154 and the

accompanying redesignations of subsections (8) through (13) as subsections (7) through (12) and bracketing the addition of subsection (14) by ch. 184 as subsection [(13)].

The 1998 amendment, by ch. 154, § 1, deleted former subdivision (7), which read, “Let out by contract the improvement of highways, the construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds five hundred dollars (\$500). At least twenty-five percent (25%) of the fund collected in any highway division must be expended within the division in which the fund was collected,” redesignated the remaining subdivisions accordingly, inserted “(1)” in present subdivision (8), and hyphenated “right-of-way” throughout the section.

The 1998 amendment, by ch. 184, § 2, in subdivision (8), inserted “(1),” added subdivision (14) (now [(13)]), and hyphenated “right-of-way” throughout the section.

CASE NOTES

Abandonment of Highway.

Because § 40-1614 does not contain the requirement of a finding that a road is in the “public interest,” the interpretation of § 40-1614 is not binding on subsection (4) of this section and the requirement of formal action by means of a finding; thus, the court rejected property owners’ argument that § 40-1614 supported a valid abandonment of a road by a county when it rejected a request for maintenance of the road. *Farrell v. Bd. of Comm’rs*, 138 Idaho 378, 64 P.3d 304 (2002), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

County had not abandoned a road by formal action, pursuant to § 40-501, even though the road was not identified as part of the county road system, because an action where the city rejected a claim to maintain the road did not amount to a finding, as required by subsection (4), that the abandonment of the road was in the public interest. *Farrell v. Bd. of Comm’rs*, 138 Idaho 378, 64 P.3d 304 (2002), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Cited French v. Sorensen, 113 Idaho 950, 751 P.2d 98 (1988); Bingham v. Franklin County, 118 Idaho 318, 796 P.2d 527 (1990); Schneider v. Howe, 142 Idaho 767, 133 P.3d 1232 (2006).

Decisions Under Prior Law

Abandonment of bridges.

Abandonment of highway.

Acceptance and use as highway.

Acquisition of lands.

Cost of improvements.

Crops, county liable for destruction.

Levy of road tax.

Liability for torts.

Liability of commissioners.

Payment of proceeds to municipality.

Street naming and numbering.

Vacancies in office.

Abandonment of Bridges.

Abandonment of a bridge must have been by ordinance, which in this context means some formal action. **Nicolaus v. Bodine**, 92 Idaho 639, 448 P.2d 645 (1968).

Abandonment of Highway.

An abandonment of the original site of a highway constituted an abandonment of the site of the highway actually used which had been little used and was not kept in repair. **Kootenai County v. Kinman**, 56 Idaho 1, 47 P.2d 887 (1935).

Acceptance and Use as Highway.

Where in an action by plaintiff residents of any unincorporated area of a county to have certain roads declared public highways and to require the county to maintain the roads, the evidence showed that the county had

regularly maintained the roads for approximately nine years, that the roads had been extensively used by the general public, and that the sales of several lots within the area had been made with particular reliance upon several written representations made by various members of the board of county commissioners that the roads would be maintained by the county, the trial court erred in granting summary judgment for the county because a substantial fact issue existed as to whether the county had accepted the roads. [Pugmire v. Johnson](#), 102 Idaho 882, 643 P.2d 832 (1982).

Acquisition of Lands.

A county had plenary power to acquire lands for highway purposes by purchase as well as by condemnation. [Bel v. Benewah County](#), 60 Idaho 791, 97 P.2d 397 (1939).

Cost of Improvements.

Ordinary and usual expense of keeping roads and bridges in repair cannot be paid out of a bond issue, but expense of a systematic improvement of roads and bridges may be paid out of a bond issue. [Independent Hwy. Dist. No. 2 v. Ada County](#), 24 Idaho 416, 134 P. 542 (1913).

Crops, County Liable for Destruction.

Where a county agreed, as part of consideration to acquire highway lands, to construct fences, and the agreement required such construction prior to the building of the highway, which the county failed to do, such failure constituted a violation of the contract and made the county liable to the vendor for crops destroyed by animals entering in upon his premises as a result of the failure to construct the fences. [Bel v. Benewah County](#), 60 Idaho 791, 97 P.2d 397 (1939).

Levy of Road Tax.

General levy for roads should be estimated and determined by commissioners, and their action was not subject to review in a proceeding for contempt for failure to obey writ of mandate. [Potlatch Lumber Co. v. Board of County Comm'rs](#), 29 Idaho 516, 160 P. 260 (1916).

Liability for Torts.

The fact that former law made all highway districts agents of the state did not thereby render them immune from liability for torts. [Mason v. Hillsdale](#)

Hwy. Dist., 65 Idaho 833, 154 P.2d 490 (1944).

Liability of Commissioners.

County commissioners were not individually liable for injuries sustained by reason of defective highways. *Worden v. Witt*, 4 Idaho 404, 39 P. 1114 (1895); *Youmans v. Thornton*, 31 Idaho 10, 168 P. 1141 (1917).

Payment of Proceeds to Municipality.

Where town or village is a separate road district, twenty-five per cent (25%) of money realized on property road tax levied by county commissioners on property in such town or village must be turned over to said town or village to be expended by town or village authorities. *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894).

Municipality need not put in a claim for the percentage of road tax which should be paid to it, but such percentage should be paid without claim being made. *Village of Mountainhome v. Elmore County*, 9 Idaho 410, 75 P. 65 (1904).

Street Naming and Numbering.

Since the purposes of the Local Planning Act (§ 67-6501 et seq.) and the duties of those charged with its administration are closely related to the planning and zoning functions that have been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since former law was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 — 50-1329 governing the filing of subdivision plats provide that all plats must be presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in the Planning Act suggests a legislative intent for the planning and standard setting of the act in respect to highways to flow to highway districts by reason of the language of former law that provided for general powers and duties of board of county commissioners and since § 67-6501 et seq. were enacted after §§ 40-1611 and 40-1615, the Local Planning Act gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Vacancies in Office.

Board of county commissioners have appointive power to fill office of road overseer when it becomes vacant. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908); *Grice v. Clearwater Timber Co.*, 20 Idaho 70, 117 P. 112 (1911).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 27 et seq.

40 C.J.S., Highways, § 375 et seq.

ALR. — Abutting owner's right to damages for limitation of access caused by conversion of conventional road into limited-access highway. 42 A.L.R.3d 13.

§ 40-605. Laying out of new highways — Widening, changing, or straightening existing highways — Purchase of rights-of-way by agreement. — Commissioners may lay out new highways within the county as they determine to be necessary. The right-of-way of any highway shall not be less than fifty (50) feet wide, except in exceptional cases. Commissioners may also change the width or location or straighten lines of any highway under their jurisdiction. If, in the laying out, widening, changing or straightening of any highway it shall become necessary to take private property, the commissioners or their director of highways shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. The commissioners shall endeavor to agree with each owner for the purchase of a right-of-way over his land included within the description. If they are able to agree with the owner, the commissioners may purchase the land out of the county highway fund under their control, and the land shall then be conveyed to the county for the use and purpose of highways.

History.

I.C., § 40-605, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-605, which comprised R.S., § 886; am. 1890-1891, p. 190, § 3; reen. 1899, p. 127, § 4; reen. R.C., § 900; am. 1911, ch. 60, § 1, subd. 900, p. 163; am. 1913, ch. 155, p. 524; reen. C.L., § 900; C.S., § 1340; am. 1921, ch. 161, § 2, p. 354; am. 1929, ch. 90, § 1, p. 147; I.C.A., § 39-505, was repealed by S.L. 1963, ch. 290, § 29.

CASE NOTES

Decisions Under Prior Law Procedure in Establishing Highways.

In order that act of county commissioners in laying out highway be valid, whether upon public domain or private property, board must conform to law

giving such authority, as power to establish highways rests in legislature and right may be exercised only in such manner as legislature provides. [Gooding Hwy. Dist. v. Idaho Irrigation Co.](#), 30 Idaho 232, 164 P. 99 (1917).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 32 et seq.

C.J.S. — 39A C.J.S., Highways, § 95 et seq.

ALR. — Eminent domain: restrictive covenant or right to enforcement thereof as compensable property right. 4 [A.L.R.3d](#) 1137.

§ 40-606. Condemnation of rights-of-way. — (1) Whenever the commissioners or their director of highways shall be unable to agree with any person for a parcel of land, or the person shall be unknown or a nonresident of the county, or a minor, or an insane or incompetent person, the commissioners or director of highways shall have the right, subject in case of the director of highways on the order of the commissioners, to begin action in the name of the county in the district court to condemn the land necessary for the right-of-way for the highway under the provisions of chapter 7, title 7, Idaho Code. An order of the commissioners, entered upon their minutes, that the land sought to be condemned is necessary for a public highway and public use shall be prima facie evidence of the fact.

(2) Any lands classified as omitted lands under federal legislation shall be governed by the provisions of [section 7-704A, Idaho Code](#).

History.

[I.C., § 40-606](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

The following sections comprising part of former chapter 6 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985:

40-606. 1901, p. 78, § 1; am. 1907, p. 572, § 1; reen. R.C., § 901; am. 1911, ch. 60, § 1, subd. 901, p. 163; am. 1912, ch. 11, § 1, p. 47; am. 1913, ch. 153, p. 522; reen. C.L., § 901; C.S., § 1341; I.C.A., § 39-506.

40-607. 1901, p. 78, § 2; am. 1907, p. 572, § 2; am. R.C., § 902; reen. C.L., § 902; C.S., § 1342; I.C.A., § 39-507.

40-608. 1901, p. 78, § 5; reen. R.C. & C.L., § 905; C.S., § 1343; I.C.A., § 39-508.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 67 et seq.

27 Am. Jur. 2d, Eminent Domain, § 414 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 30, 31, 256 et seq.

ALR. — Abutting owner's right to damages for limitation of access caused by conversion of conventional road into limited-access highway. 42 A.L.R.3d 13.

§ 40-607. County and highway district highway system construction, maintenance and right-of-way costs borne by the responsible county or highway district — Exceptions. — The costs of constructing, reconstructing, maintaining and acquiring rights-of-way for highways in a county highway system and a highway district highway system shall be borne by the responsible highway jurisdiction. This section shall not be construed as preventing counties and highway districts from contracting with the state for engineering or other services provided just compensation is paid. If planning or engineering studies show the existence of a need, a county or highway district may purchase, condemn or otherwise acquire new or additional rights-of-way for a new alignment of or improvement of an existing alignment of an extension of a county or highway district rural major collector highway through cities with populations of less than five thousand (5,000), provided the extension does not eliminate access to adjacent property owners. A county or highway district shall have jurisdiction, with the full authority to construct, maintain and control, over an extension of a rural major collector highway eligible for federal highway funds within a city, when the city population is less than five thousand (5,000). Counties and highway districts may enter into any mutual agreement for the transfer of maintenance and control of the rural major collector highway extension to the city. A county or highway district may contract with an adjoining county or highway district for the construction and/or maintenance of any part of its highway system.

History.

I.C., § 40-607, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 8, p. 803; am. 1993, ch. 127, § 1, p. 322.

STATUTORY NOTES

Prior Laws.

Former § 40-607 was repealed. See Prior Laws, § 40-606.

§ 40-608. Record of highway proceedings. — The clerk of the commissioners shall keep a book in which must be recorded separately all proceedings of the commissioners relative to each highway division, including orders laying out, altering, and opening highways; and in a separate book a description of each highway division, its deputy directors of highways, its highways, contracts, and all other matters pertaining to them.

History.

I.C., § 40-608, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-608 was repealed. See Prior Laws, § 40-606.

§ 40-609. Contracts to use dams as highways. — Commissioners are empowered to make contracts in a form and under conditions deemed proper with the persons or corporations owning or proposing to construct any dam across any river in the state, providing for the use of the dam either in whole or in part, or in a general or limited way as may be agreed upon for a public highway. If the dam and proposed highway is in more than one (1) county, the agreement shall be executed by the commissioners of each county. Contracts for the use as a public highway of any dam to be constructed may be executed prior to construction, and shall, subject to the terms of the contract, be public highways.

History.

I.C., § 40-609, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-609, which comprised R.S., § 901; reen. R.C., § 908; am. 1911, ch. 60, § 1, subd. 908, p. 164; am. 1912, ch. 4, § 2, p. 9; compiled and reen. C.L., § 908; C.S., § 1344; I.C.A., § 39-509, was repealed by S.L. 1949, ch. 39, § 1.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 209 et seq.

§ 40-610. Report of condition of highways — Filing. — On or before the first day of November in each year, the commissioners shall make a report of the condition of the work, construction, maintenance and repair of all the highways within the county, accompanied by a map or maps of them, together with any other facts necessary for establishing generally the situation and condition of highways within the county. The report shall be made in duplicate, one (1) copy to be filed in the office of the board and one (1) with the clerk of the commissioners.

History.

I.C., § 40-610, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-610, which comprised R.C., § 908a, as added by 1911, ch. 60, § 3, p. 169; reen. C.L., § 908a; C.S., § 1345; I.C.A., § 39-510, was repealed by S.L. 1949, ch. 39, § 1.

CASE NOTES

Decisions Under Prior Law Failure to Report.

Failure of county commissioners to make report on condition of highways was a breach of official duty. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912).

§ 40-611. Report of financial condition — Publication. — On or before the first day of November of each year, the commissioners shall make and file in its office a full, true and correct statement of the financial condition of the county in respect to highways as it exists on the first day of the preceding October, and of its expenditures and appropriation for highway purposes during the preceding year. A copy of the statement shall be published in at least one (1) issue of a newspaper published in the county.

History.

I.C., § 40-611, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-611, which comprised 1890-1891, p. 190, § 4; reen. 1899, p. 127, § 5; reen. R.C., § 912; am. 1911, ch. 60, § 1, subd. 912, p. 165; reen. C.L., § 912; C.S., § 1346; I.C.A., § 39-511, was repealed by S.L. 1949, ch. 39, § 1.

§ 40-612. Commissioners — Highway contracts. — No commissioner shall have interest directly or indirectly in any contract awarded or to be awarded by the commissioners, or in the benefits to be derived from them. A violation of this provision shall be a misdemeanor, and a conviction shall constitute a forfeiture of office and a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not to exceed six (6) months, or by both fine and imprisonment.

History.

I.C., § 40-612, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-612, which comprised R.S., § 906; reen. R.C. & C.L., § 913; C.S., § 1347; I.C.A., § 39-512, was repealed by S.L. 1985, ch. 253, § 1.

CASE NOTES

Decisions Under Prior Law Indictment.

Indictment which failed to allege that county commissioner was interested directly or indirectly in contract at time said contract was awarded did not state facts sufficient to constitute a public offense. *Ex parte Howell*, 27 Idaho 590, 150 P. 19 (1915).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 155 et seq.

§ 40-613. Jurisdiction in adjoining counties. — Commissioners of each county are empowered to lay out, build, repair, improve and maintain highways and bridges in any adjoining county whenever it shall appear to the commissioners that the laying out, building, repairing, improving or maintaining of highways and bridges in any adjoining county is or will be in the interest of the particular county or of benefit to the people of it. The expense shall be paid out of the county highway fund of the county whose commissioners order and contract for the work to be done. Any highway or bridge work shall not be done in any adjoining county by a particular county if the work would impair the credit of the adjoining county, injure property, or be detrimental to the interest of its citizens.

History.

I.C., § 40-613, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-613, which comprised R.S., § 907; am. 1890-1891, p. 190, § 5; reen. 1899, p. 127, § 6; reen. R.C. & C.L., § 914; C.S., § 1348; I.C.A., § 39-513, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 39.

§ 40-614. Service of notice on chairman or clerk of commissioners of adjoining county. — At least thirty (30) days before the commissioners of a particular county shall proceed to do any work in any adjoining county, it shall cause a notice to be served, in writing, on the chairman or clerk of the commissioners of the adjoining county of its intent to do the work, describing the nature, scope and kind of work to be done, giving the approximate cost of the work, the place where the work is to be performed, the approximate time the work will be commenced and the approximate time that will be required to complete the work.

History.

I.C., § 40-614, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-614, which comprised 1890-1891, p. 190, § 6; reen. 1899, p. 127, § 7; reen. R.C. & C.L., § 915; C.S., § 1349; I.C.A., § 39-514, was repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

CASE NOTES

Decisions Under Prior Law Condemnation Proceedings.

Where highways are jointly constructed by highway district, state and United States, district has power to condemn right of way. *Grangeville Hwy. Dist. v. Ailshie*, 49 Idaho 603, 290 P. 717 (1930).

Condemnation proceedings were not invalidated by reason of the fact that joint construction of highway was agreed on between highway district, state, and United States before entire right of way had been acquired. *Grangeville Hwy. Dist. v. Ailshie*, 49 Idaho 603, 290 P. 717 (1930).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 155 et seq.

§ 40-615. County and district boards — Cooperation with state. — Commissioners of any county, or the board of commissioners of any highway district, are empowered to cooperate with the state in the construction of highways or bridges, with aid from the United States or the state. The boards of commissioners are authorized to deposit with the treasurer of the state, to be placed in the state highway account, the amount of funds to be contributed by the county or highway district on any project for the improvement or construction of highways or bridges, which may be agreed upon in writing between the boards of commissioners and the board. The boards of commissioners are empowered to make deposits in advance of construction and at the time the agreement between the boards and the board is entered into. In the event the project for the improvement or construction of highways or bridges is not proceeded with, or in the event that all of the funds deposited by any board of commissioners for use on any project are not used in the completion of the project, the board shall repay any unused balances to the boards of commissioners having deposited these funds, and the state controller shall draw his warrant for the payment of those moneys out of the state highway account against claims duly approved by the board and the state board of examiners.

History.

I.C., § 40-615, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 180, § 76, p. 420.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

State highway account, § 40-702.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if

the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 76 of S.L. 1994, ch. 180 became effective January 2, 1995.

§ 40-616. Sidewalks or side paths. — Commissioners and boards of commissioners of any highway district are empowered to set apart on and along any public highway outside the boundaries of incorporated cities a strip of land not exceeding eight (8) feet in width for a sidewalk or side path and to make an order designating the width of the path and to cause the line separating the path from the highway proper to be located and marked with stakes, posts, grade or other marker. After the sidewalks and paths have been set apart and the line separating them from the highway has been located and marked, the use shall be restricted to pedestrians, riders of bicycles, and riders of electric-assisted bicycles, if not otherwise prohibited by local ordinance or by signage posted by the public agency with jurisdiction after notice by inclusion on a governing board agenda.

History.

I.C., § 40-616, as added by 1985, ch. 253, § 2, p. 586; am. 2019, ch. 84, § 1, p. 201.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 84, substituted “riders of bicycles, and riders of electric-assisted bicycles, if not otherwise prohibited by local ordinance or by signage posted by the public agency with jurisdiction after notice by inclusion on a governing board agenda” for “and riders of bicycles propelled solely by the power of the rider” at the end of the last sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 8.

§ 40-617. Contracts for repair of highways. — Commissioners shall, at least three (3) weeks prior to their regular meeting in October or March, or at other times as may become necessary, cause notice to be published in a newspaper, published in the county, for sealed bids to be received by the commissioners for the repair and improvement of the highways in the county highway system. Each proposal or bid submitted to the commissioners, shall be accompanied by a bond conditioned for the faithful performance of the duties of the contract, which may be entered into by and between the party making the proposal, or bid, and the commissioners.

History.

I.C., § 40-617, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law [Contracts for repairs.](#)

[Release of contractor.](#)

[Contracts for Repairs.](#)

Power granted boards of county commissioners to maintain public roads included power to enter into such contracts as are not prohibited for the purpose of keeping same in repair. [Twin Falls Bank & Trust Co. v. Twin Falls County, 25 Idaho 171, 136 P. 804 \(1913\).](#)

[Release of Contractor.](#)

Board of county commissioners has neither express nor implied power to accept resignation of bidder to whom they have duly and regularly awarded a road contract; it was to the interest of the county that such contracts be enforced and against its interest to release contractors from their obligations. [Corker v. Elmore County Comm'rs, 10 Idaho 255, 77 P. 633 \(1904\).](#)

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 209 et seq.

§ 40-618. Appointment of county director of highways. — The commissioners of each county may appoint and employ a county director of highways, who shall be a person qualified in highway administration, construction and maintenance, to handle the technical and administrative phases of county highway construction, maintenance and improvement. The salary and compensation of the county director of highways shall be fixed by the commissioners and shall be paid from the county highway fund. The county engineer may be appointed as the director of highways if the commissioners so determine; and in that event, his compensation as director of highways shall be distinct from, and in addition to, his compensation as county engineer.

History.

I.C., § 40-618, as added by 1985, ch. 253, § 2, p. 586.

§ 40-619. Duties and powers of county director of highways. — The county director of highways shall:

(1) Prepare and submit each year for the approval of the commissioners a tentative highway budget covering all proposed expenditures for the ensuing year.

(2) Divide the county into a suitable and convenient number of highway divisions, which shall exist only for the purpose of facilitating highway construction and maintenance activities. The geographical boundaries and arrangements of the divisions may, with the approval of the commissioners, be altered at any time at the discretion of the director of highways.

(3) Employ assistants and employees as may be necessary for county highway purposes, subject to the approval of the commissioners as to salaries or other compensation to be paid.

(4) Purchase or lease equipment necessary for county highway purposes and sell or replace obsolete equipment, subject to the approval of the commissioners as to the price, rental or cost of replacement.

(5) Cause to be erected and maintained on county highways, whenever necessary for public safety and convenience, suitable signs, markers, signals and other devices to control, guide and warn pedestrian and vehicular traffic.

(6) Cause surveys, maps, plans, specifications and estimates to be made for the construction, reconstruction and maintenance of county highways.

(7) Forbid, restrict or limit the erection of unauthorized signs, billboards or structures on the right-of-way of any county highway, and remove and destroy any unauthorized signs.

(8) Perform other acts as may be authorized by the commissioners for the improvement and maintenance of county highways.

History.

I.C., § 40-619, as added by 1985, ch. 253, § 2, p. 586.

Chapter 7 APPROPRIATIONS

Sec.

40-701. Highway distribution account — Apportionment.

40-701A. Restricted highway fund. [Repealed.]

40-702. State highway account — Establishment.

40-703. Establishment of local bridge inspection account — Administration.

40-704. Turnpike project accounts — Establishment.

40-705. Transfer and control of funds.

40-706. Disposition of motor vehicle registration money.

40-707. Appropriation of moneys in state highway account.

40-708. Policy of legislature on expenditures.

40-709. Apportionment of funds from highway distribution account to local units of government.

40-709A. Petition for highway maintenance.

40-710. American trucking association settlement fund.

40-711. Moneys of highway districts — Apportionment with counties.

40-712. City's portion of highway funds paid to auditor — Fiscal assistance funds.

40-713. Expenditure and applicability of funds.

40-714. Budgeting and allocation of funds.

40-715. Transfer of sums allocable to counties, highway districts and cities — Disbursement.

40-716. Establishment of local highway needs assessment account — Administration. [Repealed.]

40-717. Deposit and disbursement of funds of the local highway technical assistance council — Administration.

40-718. GARVEE funds established — Capital project fund — Debt service fund.

40-719. Strategic initiatives program.

40-720. Transportation expansion and congestion mitigation program — Fund established.

40-721. Transportation expansion and congestion mitigation program capital project fund — Transportation expansion and congestion mitigation program debt service fund.

§ 40-701. Highway distribution account — Apportionment. — (1)

There is established in the state treasury an account known as the “Highway Distribution Account,” to which shall be credited:

(a) Moneys as provided by sections 63-2412(1)(f)4. and 63-2418(4), Idaho Code;

(b) All moneys collected by the department, their agents and vendors, and county assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise specifically provided for; and

(c) All other moneys as may be provided by law.

(2) The highway distribution account shall be apportioned as follows:

(a) Thirty-eight percent (38%) in fiscal year 2021, thirty-eight and one-half percent (38.5%) in fiscal year 2022, thirty-nine percent (39%) in fiscal year 2023, thirty-nine and one-half percent (39.5%) in fiscal year 2024, thirty-nine and three-quarters percent (39.75%) in fiscal year 2025, and forty percent (40%) thereafter to local units of government as provided in [section 40-709, Idaho Code](#);

(b) Fifty-seven percent (57%) in fiscal year 2021, fifty-seven and one-half percent (57.5%) in fiscal year 2022, fifty-eight percent (58%) in fiscal year 2023, fifty-eight and one-half percent (58.5%) in fiscal year 2024, fifty-nine and one-quarter percent (59.25%) in fiscal year 2025, and sixty percent (60%) thereafter to the state highway account established in [section 40-702, Idaho Code](#); and

(c) Five percent (5%) in fiscal year 2021, four percent (4%) in fiscal year 2022, three percent (3%) in fiscal year 2023, two percent (2%) in fiscal year 2024, one percent (1%) in fiscal year 2025, and zero dollars thereafter to the law enforcement account [fund], established in [section 67-2914, Idaho Code](#). The state controller shall cause the remittance of the moneys apportioned to local units of government not later than January 25, April 25, July 25 and October 25 of each year, and to the law enforcement account [fund] and the state highway account as the moneys become available to the highway distribution account.

(3) All new revenues generated by increases in registration fees and fees on electric and hybrid vehicles pursuant to the provisions of House Bill No. 312, as amended in the Senate, as amended in the Senate, during the first regular session of the sixty-third Idaho legislature, and all revenues generated by fees on electric and plug-in hybrid vehicles pursuant to the provisions of [section 49-457, Idaho Code](#), shall be apportioned as follows:

(a) Forty percent (40%) to local units of government as provided in [section 40-709, Idaho Code](#); and

(b) Sixty percent (60%) to the state highway account established in [section 40-702, Idaho Code](#).

(4) Interest earned on the investment of idle moneys in the highway distribution account shall be paid to the highway distribution account.

(5) All idle moneys in the dedicated highway trust or asset accounts or subaccounts established from highway user revenues, reimbursements, fees or permits shall be invested by the state treasurer in the same manner as provided under [section 67-1210, Idaho Code](#), with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the various highway trust or asset accounts and subaccounts.

History.

[I.C., § 40-701](#), as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 198, § 2, p. 376; am. 1988, ch. 265, § 570, p. 549; am. 1989, ch. 310, § 31, p. 769; am. 1989, ch. 348, § 1, p. 875; am. 1990, ch. 158, § 1, p. 343; am. 1991, ch. 120, § 3, p. 259; am. 1992, ch. 337, § 2, p. 1008; am. 1994, ch. 180, § 77, p. 420; am. 1994, ch. 409, § 1, p. 1280; am. 1996, ch. 343, § 1, p. 1149; am. 1998, ch. 199, § 1, p. 712; am. 1999, ch. 320, § 1, p. 815; am. 2009, ch. 332, § 4, p. 962; am. 2015, ch. 341, § 15, p. 1276; am. 2017, ch. 43, § 2, p. 63; am. 2019, ch. 308, § 1, p. 928.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

The following sections comprising former chapter 7 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985:

40-701. 1885, p. 162, § 10; R.S., § 932; reen. R.C., § 928; am. 1911, ch. 133, p. 419; compiled and reen. C.L., § 928; C.S., § 1350; I.C.A., § 39-601; am. 1933, ch. 120, § 1, p. 189.

40-702. C.S., § 1350-A, as added by 1923, ch. 94, § 1, p. 112; I.C.A., § 39-602.

40-703. 1923, ch. 94, § 2, p. 112; I.C.A., § 39-603.

40-704. R.C., § 928a, as added by 1911, ch. 60, § 3, p. 170; reen. C.L., § 928a; C.S., § 1351; I.C.A., § 39-604.

40-705. R.C., § 928b, as added by 1911, ch. 60, § 3, subd. 928b, p. 170; reen. C.L., § 928b; C.S., § 1352; I.C.A., § 39-605; am. 1982, ch. 125, § 2, p. 361.

40-706. 1885, p. 162, § 14; R.S., § 933; reen. R.C., § 929; am. 1911, ch. 60, § 1, p. 165; reen. C.L., § 929; C.S., § 1353; I.C.A., § 39-606.

40-707. R.S., § 934; reen. R.C. & C.L., § 930; C.S., § 1354; I.C.A., § 39-607; am. 1982, ch. 317, § 1, p. 791.

40-708. R.S., § 935; am. 1899, p. 405, § 1; reen. R.C. & C.L., § 931; C.S., § 1355; I.C.A., § 39-608.

40-709. R.S., § 936; reen. R.C. & C.L., § 932; C.S., § 1356; I.C.A., § 39-609.

40-710. R.S., § 937; am. 1907, p. 456, § 1; reen. R.C. & C.L., § 933; C.S., § 1357; I.C.A., § 39-610.

Amendments.

The 2009 amendment, by ch. 332, updated the section references in subsection (1)(a).

The 2015 amendment, by ch. 341 added subsection (3), and redesignated former subsections (3) and (4) as subsections (4) and (5).

The 2017 amendment, by ch. 43, inserted “and all revenues generated by fees on electric and plug-in hybrid vehicles pursuant to the provisions of

section 49-457, Idaho Code” near the end of the introductory paragraph in subsection (3).

The 2019 amendment, by ch. 308, in subsection (2), rewrote paragraphs (a) and (b), which formerly read: “(a) Thirty-eight percent (38%) to local units of government as provided in section 40-709, Idaho Code; (b) Fifty-seven percent (57%) to the state highway account established in section 40-702, Idaho Code; and”, and, in paragraph (c), inserted “in fiscal year 2021, four percent (4%) in fiscal year 2022, three percent (3%) in fiscal year 2023, two percent (2%) in fiscal year 2024, one percent (1%) in fiscal year 2025, and zero dollars thereafter” near the beginning, and substituted “law enforcement” for “state highway” and “state highway” for “law enforcement” near the end.

Legislative Intent.

Section 6 of S.L. 2009, ch. 332 provided: “It is legislative intent, in light of changing consumption patterns relating to motor vehicle fuels, including gasohol, biodiesel and biodiesel blends, to review on an annual basis the distributions to the State Highway Account provided for in Sections 63-2412(1)(e) and 63-2418(3), Idaho Code.”

Compiler’s Notes.

The bracketed insertions in paragraph (2)(c) were added by the compiler to correct the name of the referenced fund. See § 67-2914.

S.L. 2011, ch. 151, § 21 purported to amend the version of this section which was amended by S.L. 2009, ch. 333, effective July 1, 2011; however, that version was repealed by S.L. 2011, ch. 68, § 1, effective July 1, 2011, and the amendment by S.L. 2011, ch. 151 was not given effect.

House Bill No. 312, referred to in the introductory paragraph in subsection (3), was enacted as S.L. 2015, Chapter 341, which is codified as §§ 40-719, 49-402, 49-434, 49-457, 57-814, 63-2402, 63-2412, and this section.

Section 14 of S.L. 2015, ch. 341 provided: “Legislative Intent. This legislation is intended to be an interconnected solution to raise revenue for Idaho’s transportation infrastructure and maintenance.”

Section 16 of S.L. 2015, ch. 341 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 1988, ch. 198 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after April 1, 1988. Section 2 of this act shall be in full force and effect on and after July 1, 1988.” Approved March 28, 1988.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Section 34 of S.L. 1989, ch. 310 declared an emergency and provided that the act would become effective retroactively to January 1, 1989. Approved April 5, 1989.

Section 2 of S.L. 1989, ch. 348 declared an emergency. Approved April 5, 1989.

Section 4 of S.L. 1991, ch. 120 declared an emergency and provided that § 1 of this act shall be in full force and effect on and after April 1, 1991 and §§ 2 and 3 of this act shall be in full force and effect on and after July 1, 1991. Approved March 1, 1991.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 77 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 1998, ch. 199 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to April 1, 1996. Approved March 20, 1998.

Section 7 of S.L. 2009, ch. 332 provided the act should take effect on and after July 1, 2009.

Section 17 of S.L. 2015, chapter 341, as amended by S.L. 2017, ch. 322, § 13, declared an emergency and provided that Sections 6 and 7 of the act were effective April 21, 2015, and Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15 [amending this section] and 16 of that act shall be in full force and effect on and after July 1, 2015.

Section 3 of S.L. 2017, ch. 43 declared an emergency. Approved February 28, 2017.

CASE NOTES

Cited French v. Sorensen, 113 Idaho 950, 751 P.2d 98 (1988).

OPINIONS OF ATTORNEY GENERAL

Interest earnings upon funds dedicated to highway purposes by Idaho Const., Art. VII, § 17, should be credited to the highway distribution account established by Idaho Code, § 40-701, and not to the state general account. OAG 89-8.

§ 40-701A. Restricted highway fund. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-701A**, as added by 1996, ch. 343, § 2, p. 1149; am. 1997, ch. 236, § 1, p. 686; am. 1998, ch. 181, § 1, p. 667, was amended by S.L. 1999, ch. 194, § 1, p. 504, effective July 1, 1999, and was repealed by S.L. 1999, ch. 320, § 4, effective July 1, 1999.

§ 40-702. State highway account — Establishment. — For the purpose of carrying out the provisions of this title, there is established in the dedicated fund of the state treasury an account to be known as the state highway account, which account shall include:

(1) All moneys received by the state treasurer for deposit to the state highway account.

(2) All fines, penalties and forfeitures incurred and collected for violations of the provisions of this title, except as otherwise provided.

(3) All donations to the state from any source for the construction and improvement of highways.

(4) All moneys received from local boards under joint contracts for the construction of state highways.

(5) All federal surface transportation funds received from the United States government, including, but not limited to, funds received pursuant to chapter 1 of title 23, United States Code, for the national highway systems program, the surface transportation program, the highway bridge program, the minimum guarantee program, the federal lands highways program and other similar programs under successor laws.

(6) Other moneys which may be provided by law for the construction and improvement of state highways.

(7) Interest earned on the investment of idle moneys in the state highway account shall be paid to the state highway account.

History.

I.C., § 40-702, as added by 1985, ch. 253, § 2, p. 586; am. 1990, ch. 158, § 2, p. 343; am. 2005, ch. 378, § 4, p. 1217.

STATUTORY NOTES

Prior Laws.

Former § 40-702 was repealed. See Prior Laws, § 40-701.

Federal References.

Chapter 1 of Title 23 of the United States Code, referred to in paragraph (5), is codified as **23 USCS § 101 et seq.**

§ 40-703. Establishment of local bridge inspection account — Administration. — In order to promote public safety at bridges on local public highways and to provide for the payment of the local matching share of federal funds available for periodic inspection of these bridges to comply with federal laws, there is established in the dedicated fund of the state treasury an account known as the “local bridge inspection account.” The department is charged with the sole and exclusive administration of this account, and shall follow federal guidelines in making bridge inspections which are to be funded in part with federal funds. Interest earned on the investment of idle moneys in the local bridge inspection account shall be paid to the local bridge inspection account.

History.

I.C., § 40-703, as added by 1985, ch. 253, § 2, p. 586; am. 1990, ch. 158, § 3, p. 343.

STATUTORY NOTES

Prior Laws.

Former § 40-703 was repealed. See Prior Laws, § 40-701.

§ 40-704. Turnpike project accounts — Establishment. — In order to provide for the redemption of and interest on turnpike revenue bonds, and construction, maintenance and operation of turnpike projects, there may be established in the dedicated fund of the state treasury an account to be known by the appropriate name of each turnpike project. Each account shall include all moneys received and paid over for the particular turnpike project, and the moneys in each account shall be expended solely for that turnpike project.

History.

I.C., § 40-704, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-704 was repealed. See Prior Laws, § 40-701.

§ 40-705. Transfer and control of funds. — All funds, appropriations and other moneys from whatever source, now or subsequently appropriated and provided by law for the administration of the functions, powers and duties of the department and the board, including those of the state highway account, shall be and the same hereby are transferred and made available to and placed under the control of the board and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and the laws of the state of Idaho.

History.

I.C., § 40-705, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-705 was repealed. See Prior Laws, § 40-701.

CASE NOTES

Decisions Under Prior Law Payment of Funds.

The provision of former law that the funds shall be paid out by the state treasurer in the manner provided by the constitution and the laws of the state of Idaho was specific legislative recognition of the superior authority of Idaho **Const., Art. IV, § 1**, which prohibits the payment of claims against the state, except salaries and compensation of officers fixed by law, unless examined by the board of examiners, and of former law that related to appropriation of moneys in the highway fund and recognized the superior constitutional power and duty of the board of examiners to examine claims. **Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959).**

§ 40-706. Disposition of motor vehicle registration money. — All moneys collected in any county from the registration of motor vehicles, trailers and semitrailers shall be forwarded to the state treasurer not later than the fifteenth day of the month following the calendar month in which the moneys were collected, and the state treasurer shall then pay the moneys collected into the highway distribution account, unless otherwise provided by law.

History.

I.C., § 40-706, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-706 was repealed. See Prior Laws, § 40-701.

CASE NOTES

Decisions Under Prior Law

Basis of apportionment.

Constitutional prohibition.

Construction.

Expense of collection.

Revenue obtained from registration.

Right to apportionment.

Basis of Apportionment.

Where the plaintiff district and another district were organized to take over a part of the defendant highway district, the basis for the apportionment among the districts to compute the amount each would pay annually for the retirement of outstanding bonds at the time of the separation was the relative assessed valuations of the districts and not their

automobile license fees. *Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.*, 65 Idaho 260, 142 P.2d 579 (1943).

Constitutional Prohibition.

Idaho Const., Art. VIII, § 2, prohibiting lending of state's credit, applies to state's share of motor vehicle license fees on deposit in banks. *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933 (1931), overruled on other grounds, *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Nowhere in the words or spirit of Idaho Const., Art. VII, § 17, is the legislature prohibited from taking the course of action exemplified in former law that provided that the moneys collected from licensing of motor vehicles, trailers and semitrailers should be sent to the state treasurer for deposit in the state highway fund. *Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970).

Construction.

Former law that directed that county treasurer pay state share of motor license money to state treasurer without any requirement that it should be paid on order of county auditor and, in action to recover same, it was not necessary to allege order directing payment of such funds to state. *State ex rel. Gallet v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Expense of Collection.

Where the legislature delegated to the various counties the obligation of collecting motor vehicle license fees without specific authority to deduct therefrom a sufficient amount to compensate for their expenses, it was not within the province of the judiciary to determine such policy. *Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970).

Revenue Obtained from Registration.

The revenue obtained by the state under the Uniform Registration Act from registrations and license fees went into the state highway fund via the motor vehicle fund and was used for highway purposes and for the state administration of the highways in various ways. *Consolidated Freight Lines v. Pfof*, 7 F. Supp. 629 (D. Idaho 1934).

Right to Apportionment.

Where the plaintiff district and another district were organized to take over part of defendant highway district, and defendant advanced money sufficient to make payment on bonds outstanding at the time of the separation and reimbursed itself for the advances when taxes were received from the other districts, the plaintiff was not entitled to share in the reimbursement fund on the theory that it was a trust fund; and where the defendant invested its own money for profit and none of the money used in such investment was contributed by the plaintiff, the plaintiff was not entitled to share in the profits so derived. [Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.](#), 65 Idaho 260, 142 P.2d 579 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Bridges and Streets, § 130 et seq.

C.J.S. — 40 C.J.S., Highways, § 383 et seq.

§ 40-707. Appropriation of moneys in state highway account. — (1) From federal funds within the state highway account, there are hereby continuously appropriated first such amounts as, from time to time, shall be certified by the Idaho housing and finance association to the state controller, state treasurer and the board as necessary for payment of principal, interest and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, which amounts shall be transferred to the GARVEE debt service fund established in [section 40-718, Idaho Code](#).

(2) The board may, but is not obligated to, use any nonfederal funds in the state highway account to pay match as required for receipt of federal funds used to pay the bonds or notes as described in subsection (1) of this section. Such match may be transferred to the GARVEE debt service fund established in [section 40-718, Idaho Code](#).

(3) One-half of one percent (.5%) of the moneys in the state highway account may be utilized to encourage the use of recycled materials including, but not limited to, recycled glass, reclaimed asphalt, asphalt containing recycled plastic, recycled rubber tires and paper in highway construction and maintenance projects. All other moneys at any time in the state highway account, except those as are otherwise required by law to be placed in the state highway redemption account, are hereby appropriated for the purpose of defraying the expenses, debts and costs incurred in carrying out the powers and duties of the Idaho transportation board as provided by law, and for defraying administrative expenses of the department, including salaries of the board, the salary of the director, and salaries and wages of employees of the department and board and expenses for traveling. Communication supplies, equipment, fixed charges and all other necessary expenses of the department, including the aeronautics air flight program and the board, not otherwise provided for and all claims against the state highway account shall be examined by the department and certified to the state controller, who shall, upon approval of the board of examiners, draw his warrant against the state highway account for all bills and claims allowed by the board.

History.

I.C., § 40-707, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 180, § 78, p. 420; am. 1994, ch. 409, § 2, p. 1280; am. 2005, ch. 378, § 5, p. 1217; am. 2011, ch. 58, § 2, p. 122.

STATUTORY NOTES**Cross References.**

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 40-707 was repealed. See Prior Laws, § 40-701.

Amendments.

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 180, § 78, substituted “state controller” for “state auditor” near the middle of the last sentence.

The 1997 amendment, by ch. 409, § 2, added the first sentence and inserted “other” following “All” at the beginning of the second sentence.

The 2011 amendment, by ch. 58, in subsection (3), substituted “Idaho transportation board” for “highway board” near the middle of the second sentence and substituted “department, including the aeronautics air flight program and the board” for “department and board” near the beginning of the last sentence.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 78 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 3 of S.L. 2011, ch. 58 declared an emergency. Approved March 11, 2011.

CASE NOTES

Decisions Under Prior Law

Appropriations, effect of making specific.

Payment of claims.

Appropriations, Effect of Making Specific.

Insofar as specific appropriations were made to different boards, bureaus or agencies of the department of public works (division of public works of the department of administration), specific appropriations marked the limit of expenditures intended by the law making power for each of said boards, bureaus or agencies, and consequently the general continuing appropriation made by former law that provided for appropriation of moneys in the state highway fund could have no application or effect with respect to these specific boards, bureaus and agencies. *State ex rel. Taylor v. Taylor*, 58 Idaho 656, 78 P.2d 125 (1938).

Payment of Claims.

Idaho Const., Art. IV, § 18 prohibits the payment of claims against the state, except salaries and compensation of officers fixed by law, unless examined by the board of examiners, and former law that related to appropriation of moneys in the highway fund and recognized the superior constitutional power and duty of the board of examiners to examine claims. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

The supreme court could not grant a writ of mandate directing the state auditor to issue certain warrants chargeable against the highway fund where the claims involved had not been presented to the board of examiners as required. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

The authority of the board of examiners as to claims based on an obligation authorized by the legislature against a specific appropriation made by the legislature was limited to determining whether the claims were in proper form, properly certified to the state auditor, whether chargeable against such appropriation, and whether there were funds remaining in the

appropriation for such payment; the board cannot veto an act of the legislature or reverse the policy declared therein by refusing to approve claims properly presented. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959); *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

Where the board of highway directors (transportation board) was empowered by former statute to hire legal counsel of its own choosing, and salaries were authorized against a specific appropriation, the board of examiners was limited to determining that the claim for payment of its legal counsel was in the proper form, properly certified to the state auditor by the department of highways (division of highways of the department of transportation), and chargeable against the appropriation. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

§ 40-708. Policy of legislature on expenditures. — (1) It is the declared policy of the legislature that, except as otherwise provided, all highway-user revenues accruing to the state highway account be spent exclusively for the maintenance, construction and development of highways and bridges in the state highway system. By mutual cooperative written agreements, or in the event of emergencies or other unusual circumstances where the financial or general welfare of the people is concerned, two (2) or more units of government may, upon a showing of cause declared and entered upon the minutes of an official meeting of the board, the boards of county, highway district commissioners or the governing body of any cities involved, as the case may be, share jointly the costs of the maintenance, construction or development of highways and bridges in any state, county, district or city system.

(2) All moneys apportioned to the board, counties or highway districts, and cities from the proceeds from the imposition of tax on fuels and from any tax or fee for the registration or operation of motor vehicles for general highway construction and maintenance, bridge and culvert moneys, shall be accounted for as to the actual expenditure to the state controller, as dedicated funds by a certification of the governing unit receiving, budgeting and expending those dedicated funds. The certification shall list the actual funds received for the budgetary period in each category of dedicated funds and the actual expenditure of the used dedicated funds. Any balance of dedicated funds unexpended must be shown and accounted for as a beginning balance in the next regular budget. The certification shall be prepared by the director, county auditor or highway district treasurer or city clerk, and shall be signed by the elected county or highway district commissioners, mayor, council, or board members of the respective reporting governmental unit. The certification shall be made by the 31st of December of each year for the preceding fiscal budget year, and shall be published once as a legal notice between January 1st and the 15th of January. Failure to make certification, failure to publish or the making of false statements in the certification shall subject the person so doing to the penalties prescribed in [section 40-207, Idaho Code](#), or be used as the grounds for removal from office of the offending officials. The state

controller is empowered to withhold the distribution of funds for noncompliance with the provisions of this section, but upon compliance shall authorize the distribution to be made.

(3) Moneys remaining unexpended in dedicated funds shall not be budgeted and expended for uses other than the limits of the dedicated fund.

(4) Highway districts may accumulate fund balances at the end of a fiscal year and carry over those fund balances into the ensuing fiscal year sufficient to achieve or maintain highway district operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves.

History.

I.C., § 40-708, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 180, § 79, p. 420; am. 1996, ch. 386, § 1, p. 1309.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 40-708 was repealed. See Prior Laws, § 40-701.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 79 of S.L. 1994, ch. 180 became effective January 2, 1995.

§ 40-709. Apportionment of funds from highway distribution account to local units of government. — Commencing July 1, 1999, and each fiscal year thereafter, from the moneys appropriated from the highway distribution account to local units of government, three hundred twenty-six thousandths of one percent (0.326%) is appropriated to the local highway technical assistance council, and the balance of the appropriation shall be distributed as follows:

(1) Thirty percent (30%) shall be apportioned among incorporated and specially chartered cities, in the same proportion as the population of the incorporated or specially chartered city bears to the total population of all the incorporated or specially chartered cities as shown by the last regular or special federal census.

(2) The remainder shall be apportioned:

(a) Ten percent (10%) shall be divided equally among all counties of the state.

(b) Forty-five percent (45%) shall be divided among the counties of the state in the proportion that the amount collected from motor vehicle registrations in each county during the last calendar year bears to the total amount of those collections in all counties in the state.

(c) Forty-five percent (45%) shall be divided among the counties of the state in the proportion that the number of miles of improved highways in the county highway system of each county bears to the total number of miles of improved highways in the county highway systems of all counties in the state. The director is directed to certify to the state controller, on or before January 1 of each year, the number of miles of improved highways in each county.

(3) Moneys paid to counties with highway districts shall be further distributed by the state as follows:

(a) Ten percent (10%) shall be divided equally among the county, if the county maintains any highways, and the highway districts;

(b) Forty-five percent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts of the county in the proportion that the amount collected from motor vehicle registrations in each area designated during the last calendar year bears to the total amount of those collections in the entire county;

(c) Forty-five percent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts in the proportion that the number of miles of improved highways in the county and the highway districts bear to the total number of miles of improved highways in the entire county highway system.

(4) The state controller shall ascertain the sums set for the apportionment and remit to the local governments their share of the amount computed. The apportionment hereby made shall be remitted to the local governments not later than January 25, April 25, July 25, and October 25 of each year.

(5) Moneys paid to incorporated or specially chartered cities shall be expended by the governing bodies of those cities solely in the construction and maintenance of highways within their corporate limits and to meet the interest and sinking fund requirements for the current year on any unpaid bonds issued by those cities for highway and bridge purposes, or refunding bonds issued to take up those bonds.

(6) Each highway district receiving an apportionment from the highway distribution account shall apportion those funds as follows: To the interest and sinking fund of the district, an amount as may be necessary to meet the interest and sinking fund requirements for that year on any unpaid bonds issued by that district, and any balance of those funds shall be used for highway and bridge maintenance and construction. Each district may expend all or any portion of the balance of those funds in the construction and maintenance of state highways within the district.

(7) No part of highway funds or any apportionment from it shall ever be used for any purposes other than those provided in this section and in [section 40-709A, Idaho Code](#), except as specifically otherwise provided. At the end of any fiscal year an unexpended balance of highway funds shall be carried forward and retained and subsequently applied to the maintenance and construction of highways or the payment of bond interest and principal and sinking fund requirements.

History.

I.C., § 40-709, as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 126, § 1, p. 319; am. 1993, ch. 177, § 1, p. 456; am. 1994, ch. 180, § 80, p. 420; am. 1994, ch. 280, § 3, p. 867; am. 1999, ch. 284, § 1, p. 706; am. 2014, ch. 214, § 1, p. 562.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

Local highway technical assistance council, § 40-2401 et seq.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 40-709 was repealed. See Prior Laws, § 40-701.

Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 180, § 80, substituted “state controller” for “state auditor” in subdivision (2)(c) and subsection (4).

The 1994 amendment, by ch. 280, § 3, in the introductory paragraph, substituted “Commencing July 1, 1994, and each fiscal year thereafter, from” for “From” and added “the sum of two hundred fifty thousand dollars (\$250,000) is appropriated to the local highway technical assistance council, and the balance of”.

The 2014 amendment, by ch. 214, inserted “and in **section 40-709A, Idaho Code**” in the first sentence of subsection (7).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was

adopted, the amendment to this section by § 80 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 3 of S.L. 2014, ch. 214 declared an emergency. Approved March 26, 2014.

CASE NOTES

Transfer of Highway Funds.

Though § 31-1508 generally prohibits the transfer of any money from one county fund to another, and subsection (7) restricts the use of certain road funds, there are exceptions thereto: the requirement of § 63-806(2) that a county transfer to the warrant redemption fund all money in the county treasury no longer needed, and, in particular, all money to the credit of the county road fund, appears to fall within these exceptions. *In re Boise County*, 465 B.R. 156 (Bankr. D. Idaho 2011).

Decisions Under Prior Law

Constitutionality.

Former law that provided for apportionment of funds to local units of government for highway purposes did not violate the constitutional provisions requiring every act to be plainly worded. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Former law that provided for appropriation of funds to local units of government for highway purposes did not impose a liability on the state respecting moneys obtained from other source, being a specific appropriation from motor fuels tax. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Former law that provided for apportionment of funds to local governmental units for highway purposes was not violative of the constitutional provision prohibiting the loaning of credit of the state of Idaho to any individual, association, or municipality, or other corporations. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Former law that provided for apportionment of funds to local governmental units for highway purposes was not violative of the constitutional inhibition against the legislature creating a liability against

the state in excess of \$2,000,000, since the statute is an appropriation and directs how the motor fuels tax shall be expended. [Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 \(1939\)](#).

Former law that provided for apportionment of funds to local governmental units for highway purposes concerned a distribution of an excise tax and did not impinge against the constitutional provision prohibiting the lawmakers from imposing taxes for county, city, town, or other municipal purposes, since that provision dealt only with ad valorem taxes. [Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 \(1939\)](#).

Former law that provided for apportionment of funds to local governmental units for highway purposes did not illegally or improperly divert state funds to other than state or public purposes, the building of highways being in the nature of a governmental function when conducted by the state in its sovereign capacity. [Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 \(1939\)](#).

Former law that provided for appropriation of funds to local governments for highway purposes did not direct a distribution of tax for county purposes, but merely directed the expenditures that may be made by counties and highway districts as state agencies, and was not violative of the constitutional provision inhibiting the lawmakers from imposing taxes for county or municipal purposes. [Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 \(1939\)](#).

The fact that the counties are not required to present claims to the state for their portion of the fund provided for in former law, to be passed upon by the board of examiners, did not violate a constitutional provision requiring claims against the state to be so passed upon. [Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 \(1939\)](#).

§ 40-709A. Petition for highway maintenance. — (1) Any county or highway district may petition the Idaho transportation board to take action, as provided in this section, to provide for the maintenance of a highway or portion thereof under the jurisdiction of a county or highway district.

(2) The petition and supporting materials shall establish the following facts:

- (a) That the subject highway or relevant portion thereof provides the only practical access to a city, town or other developed area;
- (b) That the county or highway district with jurisdiction over the subject highway, or relevant portion thereof, is obligated to maintain the highway or relevant portion thereof;
- (c) That said county or highway district historically has provided maintenance to the subject highway or relevant portion thereof sufficient to allow safe motorist access to the city, town or other developed area; and
- (d) Said county or highway district is now failing to provide maintenance sufficient to allow safe motorist access to the city, town or other developed area.

The petition shall not be based on failure to improve the highway or to expand maintenance beyond what historically has been provided. The petition shall also document the petitioner's efforts to communicate its concerns to the subject county or highway district and explain why the issue could not be resolved. The petitioner shall provide notice to the subject county or highway district, including a copy of the petition and all supporting materials.

(3) The Idaho transportation department shall publish notice of the petition as set forth in [section 40-206, Idaho Code](#), and shall provide the subject county or highway district a reasonable opportunity to respond to the petition, to take corrective action, to explain any extenuating circumstances or to otherwise address the concerns presented in the petition. Based on all information available to it, including such independent investigation as it deems appropriate, the Idaho transportation

department shall make a recommendation for action to the Idaho transportation board.

(4) The Idaho transportation board shall review the petition and the recommendation of the Idaho transportation department.

(5) If the Idaho transportation board determines that the petition is without merit, it may deny the petition without hearing and issue written findings and conclusions stating its reasons therefor.

(6) If the Idaho transportation board determines that the petition may have merit, it shall hold a hearing on the matter and allow all affected entities and interested persons an opportunity to be heard.

(7) Following the hearing provided in subsection (6) of this section, the Idaho transportation board shall either grant or deny the petition and issue findings and conclusions stating its reasons therefor. The petition shall be granted only upon a finding that the public safety, health or welfare would be endangered because the subject county or highway district is inappropriately and unreasonably failing to maintain a highway or portion thereof that it is obligated to maintain and that the facts set out in subsection (2)(a), (b), (c) and (d) of this section have been established. In determining the reasonableness of the subject county or highway district's actions with respect to the highway, the Idaho transportation board shall take into account the authority of the county or highway district to temporarily close a highway, the availability of funding and other considerations addressed in sections 40-1311 and 40-1315, Idaho Code. The Idaho transportation board shall not approve a petition with respect to a highway or portion thereof that has been vacated or is subject to an ongoing vacation or validation proceeding.

(8) If the petition is granted, the transportation department may undertake itself the maintenance of the highway or portion thereof or it may contract with another political subdivision to undertake the maintenance. In either case, the transportation department shall certify to the state controller the actual cost of maintenance undertaken by the transportation department or by the contracted political subdivision. The state controller shall pay into the state highway account of the Idaho transportation department or directly to the contracted political subdivision the actual costs incurred as certified by the transportation department. Such funds shall be deducted from the

funds that would otherwise have been allocated pursuant to [section 40-709, Idaho Code](#), to the county or highway district that failed to provide adequate maintenance.

(9) Political subdivisions that acquire funds for roadwork of any type either pursuant to this section or by separate voluntary agreement with another political subdivision or the state are hereby authorized to expend such funds outside of their jurisdictional boundaries notwithstanding any other provision of law.

(10) A county or highway district that has been the subject of a petition granted pursuant to this section may request a termination or modification of the arrangement authorized by the Idaho transportation department for maintenance by the Idaho transportation department or another entity. A request for termination shall be accompanied by appropriate documentation showing that the requesting entity is prepared to resume its maintenance responsibility for the highway. The Idaho transportation board shall consider the request for termination or modification, taking into account the information presented by the requesting entity and any other information available to the Idaho transportation board. If the Idaho transportation board determines that the concerns giving rise to the petition have been addressed and the entity is committed to resume maintenance of the highway, the Idaho transportation board shall terminate its prior action and allow the entity to resume responsibility for maintenance of the highway upon the beginning of the next fiscal year. The Idaho transportation board may also modify the existing arrangement for funding of maintenance.

(11) A decision by the Idaho transportation board granting or denying a petition or request under this section is a final agency action for purposes of [section 67-5270\(2\), Idaho Code](#).

History.

[I.C., § 40-709A](#), as added by 2014, ch. 214, § 2, p. 562.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Idaho transportation department, § 40-501 et seq.

Effective Dates.

Section 3 of S.L. 2014, ch. 214 declared an emergency. Approved March 26, 2014.

§ 40-710. American trucking association settlement fund. — (1) There is hereby established in the state treasury the American trucking association settlement fund hereafter referred to as the settlement fund, to which shall be credited all moneys as may be provided by law.

(2) Moneys in the fund are continuously appropriated and shall be used to satisfy the settlement agreement as approved by the court pursuant to Case No. CV OC 9700724D, American Trucking Association, *et al.* v. State of Idaho, *et al.*, in the fourth judicial district, in accordance with the terms of such agreement.

(3) Interest earned on the investment of idle moneys in the settlement fund shall be paid to the settlement fund.

History.

I.C., § 40-710, as added by 2000, ch. 418, § 1, p. 1331.

STATUTORY NOTES

Prior Laws.

Former § 40-710, which comprised I.C., § 40-710, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1993, ch. 126, § 3, effective July 1, 1993.

Another former § 40-710 was repealed. See Prior Laws, § 40-701.

Effective Dates.

Section 19 of S.L. 2000, ch. 418, provides: “Section 1 of this act shall be in full force and effect on and after July 1, 2000, contingent upon certification by the Secretary of State that he has received notice from the appropriate court of the Fourth Judicial District that the court has granted final approval of a settlement pursuant to Case No. CV OC 9700724D, *American Trucking Association, et al. v. State of Idaho, et al.*, or on and after the date the Secretary of State so certifies final approval of the settlement, whichever occurs later.” The Secretary of State certified that he received the notice referred to in § 19 of ch. 418 prior to October 1, 2000,

and the enactment of this section by § 1 of ch. 418 became effective October 1, 2000.

§ 40-711. Moneys of highway districts — Apportionment with counties. — (1) Within ten (10) days after the organization of a highway board, it shall be the duty of the commissioners to pay over to the treasurer of the highway district the proper share of the district's funds in the highway and bridge fund of the county, the share being ascertained and determined as follows: From the total amount of the highway and bridge funds, consisting of the balance, if any, on hand at the beginning of the current calendar year, augmented by the amount of whatever taxes may have been subsequently collected and paid into the highway and bridge funds, there shall be deducted the amount of any payments made from the funds since the beginning of the calendar year and also any amount needed to make good any deficiency in the funds that may have existed at the beginning of that year. The resulting amount is, for the purpose of the computation, termed the net highway and bridge fund. The highway district's contribution to it is an amount which bears the same ratio that the amount of the highway and bridge ad valorem taxes levied by the county within the highway district in the preceding year (less twenty-five per cent (25%) of the highway fund levied within any included cities), bears to the total amount of highway and bridge ad valorem taxes levied in the county in the preceding year. The proper share for the highway district in the highway and bridge fund is, for the purpose of this section, ninety-five per cent (95%) of the highway district's contribution to the net highway and bridge fund.

(2) All moneys thereafter coming into the county highway and bridge funds by reason of county levies made prior to the organization of the highway district, but which may not, at the time of the organization, have been collected by the county, shall as soon as collected, be accounted for and apportioned by the methods set forth above, and the highway district's proper share in it paid over to the highway district.

(3) Pending final adjustment and payment of the amounts provided for in this section, the commissioners are authorized to retain a proportion of the funds as shall be required to meet outstanding valid warrants lawfully issued against the county prior to the organization of the highway district and outstanding indebtedness of the county lawfully contracted prior to the

organization of the highway district lawfully chargeable and payable out of those funds. This section shall not apply to the proceeds of taxes specially levied to meet the requirements of bonds issued by the county.

History.

I.C., § 40-711, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 40-712. City's portion of highway funds paid to auditor — Fiscal assistance funds. — (1) Any city which maintains highways shall continue to receive their proportionate share of moneys distributed under [section 40-709, Idaho Code](#), but in a single county-wide highway district organized under the provisions of chapter 10, title 40, Idaho Code, or under chapter 273, laws of 1971, those moneys shall be paid to the county auditor for the benefit of the county-wide highway district.

(2) Any city or county which receives moneys under the provisions of the state and local fiscal assistance act of 1972 may utilize those funds for any purposes that were solely the responsibility of that city or county prior to March 17, 1973, and which responsibility was transferred to a county-wide highway district by chapter 273, laws of 1971. Any city or county which receives moneys under the provisions of the state and local fiscal assistance act of 1972 may utilize those funds for the design, construction, reconstruction and maintenance of sidewalks, when deemed to be for public safety. Utilization of the fiscal assistance funds may be accomplished by a transfer of the funds to a county-wide highway district, and the provisions of sections 67-2326 through and including 67-2333, Idaho Code, may be utilized for transfer, provided, the provisions of the state and local fiscal assistance act of 1972 are adhered to.

History.

[I.C., § 40-712](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Federal References.

The state and local fiscal assistance act of 1972, referred to in subsection (2), is Act Oct. 20, 1972, [P.L. 92-512](#), which formerly appeared as [31 USCS § 1221 et seq.](#), prior to enactment of Title 31 into positive law in 1983. Similar provisions are now contained in [31 USCS § 6701 et seq.](#)

Compiler's Notes.

Chapter 273, laws of 1971, referred to in this section, was repealed by § 1 of S.L. 1985, ch. 253.

§ 40-713. Expenditure and applicability of funds. — The commissioners and the board of commissioners of each highway district are empowered to expend all or any portion of moneys received by them from the highway distribution account, in cooperation with the state of Idaho or the United States, or both, in the construction of highways or bridges.

History.

I.C., § 40-713, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

§ 40-714. Budgeting and allocation of funds. — (1) The commissioners shall budget and allocate the moneys from the highway distribution account to be available during the year for which the budget is made as in the manner now provided by law for the budgeting of its expenditures, and may budget and allocate so much of them as shall be available for construction and maintenance of highways, in cooperation with the state of Idaho and United States, or either.

(2) The board of commissioners of each highway district may at any meeting allocate the moneys then available and to become available from the highway distribution account during that year for the construction and maintenance of highways, in cooperation with the state of Idaho and the United States, or either.

History.

I.C., § 40-714, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 182 et seq.

ALR. — Eminent domain: restrictive covenant or right to enforcement thereof as compensable property right. 4 **A.L.R.3d 1137**.

§ 40-715. Transfer of sums allocable to counties, highway districts and cities — Disbursement. — It is the duty of the state controller to draw warrants upon the state treasury for the transfer of the distributive sums allocable to the several counties, highway districts and cities, which warrants shall be made payable directly to the county treasurers, highway district secretary or city clerk. The county treasurers shall deposit the moneys in the county highway fund, highway district secretaries shall deposit the moneys in the highway district road fund and the city clerk shall deposit the moneys in the city street fund.

History.

I.C., § 40-715, as added by 1985, ch. 253, § 2, p. 586; am. 1993, ch. 126, § 2, p. 319; am. 1994, ch. 180, § 81, p. 420; am. 2003, ch. 32, § 22, p. 115.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 81 of S.L. 1994, ch. 180 became effective January 2, 1995.

**§ 40-716. Establishment of local highway needs assessment account
— Administration. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-716**, as added by 1986, ch. 99, § 2, p. 277; am. 1990, ch. 158, § 4, p. 343, was repealed by S.L. 1994, ch. 280, § 7, effective July 1, 1995.

§ 40-717. Deposit and disbursement of funds of the local highway technical assistance council — Administration. — (1) Funds apportioned under [section 40-709, Idaho Code](#), to the local highway technical assistance council shall immediately be deposited by the council in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. All funds so deposited and interest from the same are hereby continuously appropriated for the purpose of carrying out the provisions of chapter 24, title 40, Idaho Code.

(2) The local highway technical assistance council is charged with the sole and exclusive administration of the council funds and shall follow federal guidelines in providing technical assistance to local highway jurisdictions which may be funded in part with federal funds. Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such account, signed by two (2) officers of the council or employees designated by the council.

(3) The right is reserved to the state of Idaho to audit the accounts and expenditures of the council at any time.

(4) All money received or expended by the council shall be audited annually by a certified public accountant, designated by the council, as provided in [section 40-2405, Idaho Code](#).

History.

[I.C., § 40-717](#), as added by 1994, ch. 280, § 4, p. 867; am. 1995, ch. 268, § 1, p. 866.

§ 40-718. GARVEE funds established — Capital project fund — Debt service fund. — (1) There is established in the state treasury a fund known as the “GARVEE Capital Project Fund” which shall include:

(a) Any draw by the board of proceeds from the transportation bonds or notes issued by the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code.

(b) Interest earned on the investment of idle moneys in the GARVEE capital project fund shall be paid to the GARVEE capital project fund.

Disbursements from this fund shall be made for projects in accordance with chapter 3, title 40, Idaho Code. All moneys in the fund are hereby continuously appropriated to the department.

(2) There is established in the state treasury a fund known as the “GARVEE Debt Service Fund” for the purpose of paying the principal, interest and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code. The fund shall include:

(a) Amounts transferred from the state highway account upon certification by the Idaho housing and finance association to the state controller, state treasurer and the board as necessary for payment of principal, interest and other amounts required for transportation bonds or notes.

(b) Amounts distributed pursuant to [section 63-2520\(b\)\(5\), Idaho Code](#). Provided that such moneys distributed to the GARVEE debt service fund pursuant to this paragraph shall be used in combination with the amounts provided for in paragraph (a) of this subsection and shall be used for payment of principal, interest and other amounts required for transportation bonds or notes.

(c) Interest earned on the investment of idle moneys in the GARVEE debt service fund shall be paid to the GARVEE debt service fund.

From moneys within this fund, there are hereby continuously appropriated such amounts as, from time to time, shall be certified by the Idaho housing

and finance association to the state controller, state treasurer and the board as necessary for payment of principal, interest and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, which amounts shall be paid over as directed by the association.

History.

I.C., § 40-718, as added by 2005, ch. 378, § 6, p. 1217; am. 2014, ch. 115, § 1, p. 328.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State highway account, § 40-702.

Amendments.

The 2014 amendment, by ch. 115, inserted present paragraph (2)(b) and redesignated former paragraph (2)(b) as paragraph (2)(c).

Compiler's Notes.

For more on the GARVEE transportation program, see <http://www.itd.idaho.gov/Projects/garvee/default.asp>.

§ 40-719. Strategic initiatives program. — (1) The Idaho transportation department shall establish and maintain a strategic initiatives program. The purpose of the program is to fund transportation projects that are proposed by the department's six (6) districts and local units of government. Proposed projects shall compete for strategic initiative program selection and funding on a statewide basis based on an analysis of their return on investment in the following categories:

- (a) Safety, including the projected reduction of crashes, injuries and fatalities;
- (b) Mobility, including projected traffic-flow improvements for freight and passenger cars;
- (c) Economic opportunity, including the projected cost-benefit ratio for users and businesses;
- (d) The repair and maintenance of bridges;
- (e) The purchase of public rights-of-way; and
- (f) Children pedestrian safety on the state and local system.

(2) There is hereby established in the state treasury the strategic initiatives program fund to which shall be deposited:

- (a) Notwithstanding the provisions of [section 57-814, Idaho Code](#), the provisions of this paragraph shall only be in effect from the effective date of this act through May 31, 2019. After the close of the fiscal year, the state controller shall determine any excess cash balance in the general fund. When calculating any excess cash balance the state controller shall first provide for the ending balance as determined by the legislative record to be carried over into the next fiscal year, plus an amount sufficient to cover encumbrances as approved by the division of financial management, and an amount sufficient to cover any reappropriation as authorized by the legislature. On July 1, or as soon thereafter as is practicable, the state controller shall transfer fifty percent (50%) of any general fund excess to the strategic initiatives fund.

(b) Any other appropriated moneys for funding of the strategic initiatives program.

(c) Unless otherwise specified, moneys transferred into the strategic initiatives program fund after May 30, 2017, shall be apportioned as follows:

(i) Sixty percent (60%) to projects proposed by the Idaho transportation department's six (6) districts; and

(ii) Forty percent (40%) to local units of government for the purpose of operating a strategic initiatives program administered by the local highway technical assistance council established in [section 40-2401, Idaho Code](#).

(d) The strategic initiatives program for local units of government shall be exempt from the requirements contained in subsection (1)(c) of this section.

(3) Interest earned on the investment of idle moneys in the fund shall be paid to the fund. All moneys in the fund shall be used for funding the strategic initiatives program.

History.

[I.C., § 40-719](#), as added by 2015, ch. 341, § 6, p. 1276; am. 2017, ch. 322, § 8, p. 841; am. 2017, ch. 337, § 1, p. 871.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1901 et seq.

General fund, § 67-1205.

State controller, § 67-1001 et seq.

Amendments.

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 322, inserted “and local units of government” at the end of the second sentence in the introductory

paragraph in subsection (1); in subsection (2), rewrote paragraph (a), which formerly read: “Notwithstanding the provisions of [section 57-814, Idaho Code](#), the provisions of this paragraph shall only be in effect from the effective date of this act through May 31, 2017. The state controller shall transfer fifty percent (50%) of any excess cash balance from the general fund to the strategic initiatives program fund upon the financial close of the current fiscal year subject to the following criteria: When calculating any excess cash balance the state controller shall first provide for the ending balance as determined by the legislative record to be carried over into the next fiscal year, plus an amount sufficient to cover encumbrances as approved by the division of financial management, and an amount sufficient to cover any reappropriation as authorized by the legislature” and added paragraphs (c) and (d); and designated the last paragraph as subsection (3).

The 2017 amendment, by ch. 337, in subsection (1), added “and local units of government” to the end of the second sentence in the introductory paragraph and added paragraph (f); in subsection (2), rewrote paragraph (a), which formerly read: “Notwithstanding the provisions of [section 57-814, Idaho Code](#), the provisions of this paragraph shall only be in effect from the effective date of this act through May 31, 2017. The state controller shall transfer fifty percent (50%) of any excess cash balance from the general fund to the strategic initiatives program fund upon the financial close of the current fiscal year subject to the following criteria: When calculating any excess cash balance the state controller shall first provide for the ending balance as determined by the legislative record to be carried over into the next fiscal year, plus an amount sufficient to cover encumbrances as approved by the division of financial management, and an amount sufficient to cover any reappropriation as authorized by the legislature” and added paragraphs (c) and (d); and designated the last paragraph as subsection (3).

Compiler’s Notes.

Section 13 of S.L. 2015, ch. 341 provided: “Legislative Intent. It is the intent of the Legislature that the Idaho State Police and the State Tax Commission shall, no later than the first day of the 2016 legislative session, provide recommendations to the Senate Transportation Committee and the House Transportation and Defense Committee on greater enforcement of the prohibition of dyed fuel and other untaxed fuel use on Idaho roads and highways.”

Section 14 of S.L. 2015, ch. 341 provided: “Legislative Intent. This legislation is intended to be an interconnected solution to raise revenue for Idaho’s transportation infrastructure and maintenance.”

Section 16 of S.L. 2015, ch. 341 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Section 16 of S.L. 2017, ch. 322 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2017, Chapter 322 became law without the signature of the governor.

S.L. 2017, Chapter 337 became law without the signature of the governor.

Effective Dates.

Section 17 of S.L. 2015, chapter 341, as amended by S.L. 2017, ch. 322, § 13, declared an emergency and provided that Sections 6 [amending this section] and 7 of the act were effective April 21, 2015, and Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15 and 16 of that act shall be in full force and effect on and after July 1, 2015.

§ 40-720. Transportation expansion and congestion mitigation program — Fund established. — (1) The Idaho transportation department shall establish and maintain a transportation expansion and congestion mitigation program.

(2) The fund established pursuant to this section shall finance projects that expand the state system to address and mitigate transportation congestion. The projects shall be evaluated by the Idaho transportation department and shall be chosen by the Idaho transportation board based on a policy that may include mitigation of traffic times, improvement to traffic flow and mitigation of traffic congestion.

(3) There is hereby established in the state treasury the transportation expansion and congestion mitigation fund, to which shall be deposited:

- (a) All moneys distributed pursuant to [section 63-2520, Idaho Code](#);
- (b) All moneys distributed pursuant to [section 63-3638, Idaho Code](#); and
- (c) Any other appropriated moneys for funding the transportation expansion and congestion mitigation program.

(4) Interest earned on the investment of idle moneys in the fund shall be paid to the fund. All moneys in the fund shall be used for the transportation expansion and congestion mitigation program.

(5) The Idaho housing and finance association is hereby authorized to issue bonds, secured by otherwise unobligated moneys in the fund established in subsection (3) of this section, for the purpose of financing state transportation projects approved by the Idaho transportation board. The Idaho transportation board shall take into consideration the mitigation of traffic congestion from the state campus site located at 11311 West Chinden Boulevard, Boise, as a priority when approving transportation projects. Moneys from the fund established in subsection (3) of this section shall be used to pay any of the principal, interest, and other amounts for state transportation projects approved by the Idaho transportation board and required for bonds issued pursuant to this subsection in accordance with the provisions of chapter 62, title 67, Idaho Code. If such bonds are issued,

moneys in the fund shall first be continuously appropriated and used for repayment of said bonds in accordance with subsection (7) of this section.

(6) The authority provided in subsection (5) of this section shall be used only to issue bonds on an approved resolution by the Idaho transportation board requesting that the Idaho housing and finance association issue bonds contingent upon:

(a) The availability of otherwise unobligated moneys in the fund, established in subsection (3) of this section, necessary to meet bond service obligations;

(b) The moneys disbursed being used in accordance with United States treasury regulations to ensure tax-exempt status is retained, unless tax-exempt bonds are not available; and

(c) The issuance of bonds at prevailing market rates of interest.

(7) From moneys in the fund established in this section, there are hereby continuously appropriated first such amounts as from time to time shall be certified by the Idaho housing and finance association to the state controller, the state treasurer, and the Idaho transportation board as necessary for payment of principal, interest, and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, that are issued to finance improvements described in this section, which amounts shall not exceed the amount received and transferred from [section 63-3638\(16\), Idaho Code](#), which amounts shall be transferred to the transportation expansion and congestion mitigation program debt service fund established in [section 40-721\(2\), Idaho Code](#).

History.

[I.C., § 40-720](#), as added by 2017, ch. 322, § 9, p. 841; am. 2019, ch. 307, § 1, p. 919.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Idaho transportation board, § 40-301 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2019 amendment, by ch. 307, added subsections (5) to (7).

Compiler's Notes.

Section 16 of S.L. 2017, ch. 322 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2017, Chapter 322 became law without the signature of the governor.

§ 40-721. Transportation expansion and congestion mitigation program capital project fund — Transportation expansion and congestion mitigation program debt service fund. — (1) There is hereby established in the state treasury the transportation expansion and congestion mitigation program capital project fund that shall include any draw by the Idaho transportation board of proceeds from the transportation bonds or notes issued by the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, to finance improvements described in [section 40-720, Idaho Code](#). Interest earned on the investments of idle moneys in the transportation expansion and congestion mitigation program capital project fund shall be paid to the transportation expansion and congestion mitigation program capital project fund. Disbursements from this fund shall be paid over as requested by the Idaho transportation board and shall be made for projects in accordance with [section 40-720, Idaho Code](#). All moneys in the fund are hereby continuously appropriated to the department.

(2) There is hereby established in the state treasury the transportation expansion and congestion mitigation program debt service fund for the purpose of paying the principal, interest, and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, issued to finance improvements described in [section 40-720, Idaho Code](#). The fund shall include amounts distributed pursuant to sections 40-720(7) and 63-3638(16), Idaho Code, provided that such moneys distributed to the transportation expansion and congestion mitigation program debt service fund pursuant to this subsection shall be used for payment of principal, interest, and other amounts required for transportation bonds or notes issued by the Idaho housing and finance association for improvements described in [section 40-720, Idaho Code](#). Interest earned on the investment of idle moneys in the transportation expansion and congestion mitigation program debt service fund shall be paid to the transportation expansion and congestion mitigation program debt service fund. From moneys within this fund, there are hereby continuously appropriated such amounts as from time to time shall be certified by the Idaho housing and finance association to the

state controller, the state treasurer, and the Idaho transportation board as necessary for payment of principal, interest, and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, issued for improvements described in [section 40-720, Idaho Code](#), which amounts shall be paid over as directed by the association. Any funds in excess of the amount necessary to meet the payment authorized in this section shall be transferred to the transportation expansion and congestion mitigation fund established in [section 40-720, Idaho Code](#).

History.

[I.C., § 40-721](#), as added by 2019, ch. 307, § 2, p. 919.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Idaho transportation board, § 40-301 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Chapter 8

TAXES

Sec.

40-801. Authority and procedure for levies.

40-802. Auditor to furnish market value for assessment purposes — Board to make levy.

40-803. Collection by county officials.

40-804. Liability of county officials.

40-805. Payment of money to district.

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40-810. Levy in special tax districts.

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40-821. Treasurer of highway district — Duties.

- 40-822. Detached territory — Order determining apportionment of indebtedness — Special levy.
- 40-823. Levy to pay indebtedness upon division of district.
- 40-824. Computation and payment of indebtedness of dissolved district situated in two or more counties.
- 40-825. Levies to pay claims against dissolved or consolidated systems and districts — Certification and assessment — Issuance of new highway users' fund bonds.
- 40-826. Collection of taxes — Disposition upon collection.
- 40-827. Authorization for voters to approve vehicle registration fee.

§ 40-801. Authority and procedure for levies. — (1) The commissioners of a county highway system, the commissioners of a county-wide highway district, and the commissioners of highway districts are empowered, for the purpose of construction and maintenance of highways and bridges under their respective jurisdictions, to make the following highway ad valorem tax levies as applied to the market value for assessment purposes within their districts:

(a) Two-tenths per cent (0.2%) of market value for assessment purposes for construction and maintenance of highways and bridges; provided that if the levy is made upon property within the limits of any incorporated city, fifty per cent (50%) of the funds shall be apportioned to that incorporated city.

(b) A special levy of eighty-four thousandth per cent (0.084%) of market value for assessment purposes to be used for any one (1) or all of the following purposes: 1. bridge maintenance and construction;

2. matching state and federal highway funds; 3. secondary highway construction;

4. secondary highway maintenance and improvements; 5. maintenance during an emergency.

No part of this levy shall be apportioned to any incorporated city.

(2) The tax levies authorized by this section shall be certified to the county auditor of the county in which the levies are made, at the same time that other tax levies are certified for other county purposes, shall be collected by the same officers and in the same manner as any other county taxes are collected, and paid into the county treasury and apportioned to the districts or taxing units in the amount that their respective levies produced, exclusive of ordinary collection fees to the county and the proper apportionment to the incorporated cities.

(3) The total levies for construction and maintenance of highways and bridges, secondary highway matching funds and construction and maintenance of bridges only, shall not exceed two hundred eighty-four thousandth per cent (0.284%) of the market value for assessment purposes.

History.

I.C., § 40-801, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 8 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-801. R.S., § 945; am. 1903, p. 367, § 1; reen. R.C., § 936; am. 1911, ch. 56, § 1, p. 150; am. 1915, ch. 84, p. 202; reen. C.L., § 936; am. 1919, ch. 62, § 1, p. 196; C.S., § 1358; I.C.A., § 39-701.

40-802. R.S., § 947; reen. R.C. & C.L., § 938; C.S., § 1360; am. 1927, ch. 73, § 2, p. 91; I.C.A., § 39-702; am. 1967, ch. 274, § 1, p. 770; am. 1977, ch. 39, § 1, p. 71.

40-803. 1890-1891, p. 190, § 12; reen. 1899, p. 127, § 13; reen. R.C. & C.L., § 939; C.S., § 1361; I.C.A., § 39-703.

40-804. R.S., § 950; reen. R.C. & C.L., § 940; C.S., § 1362; I.C.A., § 39-704.

40-805. R.S., § 951; reen. R.C. & C.L., § 941; C.S., § 1363; I.C.A., § 39-705.

40-806. R.S., § 952; reen. R.C. & C.L., § 942; C.S., § 1364; I.C.A., § 39-706.

40-807. 1913, ch. 126, p. 473; reen. C.L., § 942a; C.S., § 1365; am. 1931, ch. 97, § 1, p. 170; I.C.A., § 39-707.

CASE NOTES

Statutory Duties.

District court erred in upholding the validity of a joint powers agreement (JPA) between a city and a highway district, because, while the parties were authorized to enter into the JPA to share the duties and to share the cost of carrying out those duties, the JPA illegally purported to divest the district of the duties to improve and maintain the city street system, or even to supervise those endeavors, while transferring full authority to the city to

exercise full control over the city streets, along with its share of ad valorem property tax revenues. *City of Sandpoint v. Indep. Highway Dist.*, 161 Idaho 121, 384 P.3d 368 (2016).

Cited *City of Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 726 et seq.

C.J.S. — 40 C.J.S., Highways, § 365 et seq.

§ 40-802. Auditor to furnish market value for assessment purposes — Board to make levy. — On or before the third Monday in July of each year the county auditor shall deliver to the secretary of each highway district within the county a statement showing the aggregate market value for assessment purposes of all the taxable property in the district, and showing separately the aggregate market value for assessment purposes of all the taxable property within each included city in each district. The highway district board shall levy the taxes provided for.

History.

I.C., § 40-802, as added by 1985, ch. 253, § 2, p. 586; am. 2012, ch. 38, § 3, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 40-802 was repealed. See Prior Laws, § 40-801.

Amendments.

The 2012 amendment, by ch. 38, substituted “auditor” for “assessor” in the section heading and in the first sentence and substituted “third Monday” for “first Monday” in the first sentence.

Effective Dates.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 375 et seq.

§ 40-803. Collection by county officials. — The taxes levied by a highway board shall be extended on the general roll by the county assessor in a separate column at the rate fixed by the highway board and certified by the secretary of the highway board, at the same time the county taxes are extended. The taxes shall be carried into a column of aggregates and shall be collected by the tax collector of the county at the time and in the manner provided by law for collecting county taxes. The tax collector shall have the same powers conferred upon him respecting the collection of highway district taxes and the sale of delinquent property as are conferred respecting the collection of other county taxes.

History.

I.C., § 40-803, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-803 was repealed. See Prior Laws, § 40-801.

§ 40-804. Liability of county officials. — All county officers entrusted with the assessment, collection, paying over or custody of taxes of any highway district within the county, and their sureties, shall be liable upon their official bonds for the faithful performance of their duties in the assessment, collection and safekeeping of the highway district taxes.

History.

I.C., § 40-804, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-804 was repealed. See Prior Laws, § 40-801.

CASE NOTES

Cited *City of Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 174.

§ 40-805. Payment of money to district. — It is the duty of the tax collector of the county to pay over to the treasurer of the highway district all district tax moneys collected by him and payable to the district as soon as they are collected, and on or before the third Monday in July in each year make a final settlement with the district treasurer respecting the district taxes and pay over all moneys then due to the district, including all the district's proportionate amount of delinquent district taxes, interest and costs on all tax sales and redemptions from them. The treasurer of the district shall give to the tax collector of the county duplicate receipts for the payments, and the tax collector shall give one to the secretary of the district and the other shall be an acquittance to the county tax collector in settling with the highway district, to the extent of the payment shown.

History.

I.C., § 40-805, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-805 was repealed. See Prior Laws, § 40-801.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 375 et seq.

§ 40-806. General laws applicable. — All ad valorem highway taxes levied and assessed under the provisions of this title shall become due and delinquent and shall attach to and become a lien on the real property assessed at the same time as other county taxes. All the provisions of the Idaho Code, governing the assessing and collecting of county taxes, are applicable to the assessment and collection of highway district taxes, wherever the same are consistent with the provisions of this title.

History.

I.C., § 40-806, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-806 was repealed. See Prior Laws, § 40-801.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 375 et seq.

§ 40-807. Joint local highway jurisdiction bridges — Additional tax levy. — (1) Any two (2) or more local highway jurisdictions in the state are empowered to join in the construction, maintenance and repair of bridges at places where the bridges will directly benefit each of the local highway jurisdictions, and contract for the cost of construction, maintenance or repair of the bridge that each local highway jurisdiction is to bear.

(2) For the purpose of defraying the costs and expenses incurred under the provisions of this section, the commissioners of the respective local highway jurisdictions are empowered to levy upon all taxable property of each local highway jurisdiction, in addition to all other taxes, an annual tax not exceeding twenty-four ten thousandths percent (0.0024%) of the market value for assessment purposes of the property. The entire proceeds of the levy shall be used solely for the purposes of this section.

History.

I.C., § 40-807, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 154, § 2, p. 528.

STATUTORY NOTES

Prior Laws.

Former § 40-807 was repealed. See Prior Laws, § 40-801.

§ 40-808. Creation of special tax districts — Apportionment of costs.

— As a highway is built and completed with the proceeds of a bond issue within an area of land which under a resolution of a highway district board is provided, there may be created a special tax district. When the highway has been accepted by the highway district board, and the director of highways for the district has certified to his board the cost of the highway so far as it lies within the special tax district, then the highway district board shall, by order, create a special tax district, fix and designate the boundaries of it, and designate the portion of the cost of the highway to be charged against the land in the special tax district, not exceeding the maximum percentage specified in the original resolution. The highway district board shall fix and determine the amount per acre charged against the lands within the special tax district, not exceeding, in respect to any single highway, the maximum amount per acre specified for the highway in the original resolution. The amount per acre need not be the precise proportionate cost of the highway, but may be the approximate proportion, avoiding inconvenient fractions or fractional parts of a dollar, and shall be the same uniform amount per acre throughout any single special tax district. The highway district board shall include as part of the cost of the highway the fair and reasonable portion of overhead charges applicable, and an additional amount equal to two per cent (2%) of the cost to cover the expenses of the highway district for the collection of the special taxes. From time to time as highways or portions of highways are completed and accepted and the cost certified, the highway district board shall create the proper tax districts. In respect to each special tax district created, the highway board is constituted the local executive authority of each special tax district with authority in respect to each district, to levy the special tax, the authority being confined in each district to the limits of the highway district, and within the limits the special tax in each special tax district shall be at a uniform amount per acre throughout the special tax district. The order of the highway district board creating the special tax district, fixing and determining its boundaries, stating the number of acres in it, fixing the amount of the indebtedness created by the bond issue which is charged against the land in the special tax district, and the amount per acre to be specially taxed against the land shall be entered at length on the minutes of

the highway district board and shall be open to public inspection. A notice stating generally the nature and date of the order and designating the township and sections within the special tax district shall be published for at least two (2) separate times in a newspaper published in the county. On the filing with the secretary of the highway district of proof of publication, the order shall be deemed complete.

History.

I.C., § 40-808, as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 106 et seq.

§ 40-809. Appeal from order of highway district board in special tax districts. — Within thirty (30) days after the filing provided for in [section 40-808, Idaho Code](#), but not after the expiration of the thirty (30) days, any owner of land within a special taxing district may file in the office of the highway district board a copy of a verified petition in a proceeding in the district court of the highway district for the review of the order, specifying the grounds of objection. At the expiration of the thirty (30) days, all proceedings relating to the special tax district where copies of petitions for review have been duly filed shall be consolidated by order of the district court into a single proceeding, and notice shall be given and procedure followed as the district court shall prescribe. The district court shall have jurisdiction as a court of equity, and without a jury, try and determine the proceeding. On the review, the only question to be tried and determined shall be whether, in creating a special tax district and in fixing the amounts so charged against the land, the district board has observed the requirements specified in sections 40-810 and 40-811, Idaho Code. The district court shall, if it determines that the board has materially departed from the requirements, make a final order in the proceeding directing any necessary change or modification in the order of the highway district board, and that board shall make the changes and modifications in their order, and the changed or modified order shall be submitted to the district court and finally made as directed and approved by the court. If in the proceeding the district court shall determine that the highway board has not materially departed from the requirements, it shall affirm the order of the highway district board. On the expiration of thirty (30) days from the date of the highway district board's original order, without any copy of a petition for review having been filed, or on the filing with the secretary of the highway board, of the order of the district court in the proceeding for review affirming the order, or on the filing with the secretary of the new order of the board embodying the changes and modifications directed by the district court in the proceeding for review, with the written approval of the court attached, as the case may be, the order shall be final and conclusive in respect to all the matters and things contained.

History.

I.C., § 40-809, as added by 1985, ch. 253, § 2, p. 586.

§ 40-810. Levy in special tax districts. — When an order of the highway district board has become final and conclusive, the board shall levy upon all the land within the special tax district created by the order a special tax equal in amount to the amount so charged in the order against the special tax district, specifying the amount per acre. The secretary of the district shall transmit to the assessor and tax collector of the county a certified copy of the levy and of the order creating the special tax district. On receiving the certified copy, the county assessor shall assess, against the land in the special tax district, the amount levied, but it shall not be collected except as installments as shall be called for by the annual levies made by the highway district board of the taxes necessary to meet the requirements of the bonds. The existence of an assessment against land in the special tax district shall not be held to constitute a cloud upon the title of that land, nor as a breach of a covenant [covenant] of warranty, title, nor against encumbrances in a deed or contract for the land, nor as rendering the title to the land unmarketable. The special tax authorized within special tax districts is a tax for the purpose of securing for the special tax districts the benefit of local highways within the limits of the special tax district, as distinguished from the general purpose of the bond issue as a whole of securing the benefit of a system of highways for the highway district at large.

History.

I.C., § 40-810, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the fourth sentence was added by the compiler to correct the spelling of the term.

CASE NOTES

Decisions Under Prior Law [Constitutionality](#).

Highways within municipalities.

Constitutionality.

Former law in providing for special property road tax on property otherwise taxed for general road purposes did not authorize double taxation within the meaning of Idaho Const., Art. VII, § 5. *Humbird Lumber Co. v. Kootenai County*, 10 Idaho 490, 79 P. 396 (1904).

Highways within Municipalities.

Although road and bridge finances of cities and villages were provided for by statute, county or state could assist in building roads and bridges within the corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 365 et seq.

§ 40-811. Limitations on levy in special tax districts. — No special tax or charge shall be made by a highway district against land within a special tax district until the highway has been completed to within at least one (1) mile of all the land within the special tax district, the highway has been accepted by the district board, the cost certified, and all the proceedings taken as specified. All interest payable on the bonds up to that time shall be paid by the highway district without imposing on the special tax district a special tax other than its share in the taxation of the highway district as a whole. After the special tax has been levied the highway district board shall in each year, at the same time of the tax levy to meet the interest requirements of bonds, also levy a special tax on the land within every special tax district then created, in an amount sufficient to pay the interest for that year on the portion of the bond issue, the indebtedness which shall have been charged against the special tax district. Whenever the highway district board shall levy a tax to meet any principal or sinking fund requirement of the bonds, they shall at the same time levy a special tax on the land within every special tax district an amount sufficient to pay the principal or sinking fund requirements for that year on the portion of the bond issue, the indebtedness of which shall have been charged against the special tax district. All special taxation within any single special tax district shall be of a uniform amount per acre within the special tax district. Each installment of principal or sinking fund tax collected from the taxation of any land within a special tax district shall be credited on the original assessment of special tax made, and where all the installments shall have been paid, the special assessment shall be deemed canceled, paid and discharged. No special tax district shall ever be called upon to pay as special taxes any sum greater than the amount charged against the district or the land in the original special assessment and proportionate share of interest. In making the levy for the requirements of the bonds, the highway district board shall levy on the district at large only an amount of taxes in each year as shall be required to meet the requirements for that year of that portion of the bond issue which has not been charged against the special tax districts. Should the levy together with the levies on special tax districts in any year fail to produce sufficient funds to meet the obligation of the highway district on the whole issue, then the deficiency shall be paid out of

the other revenues of the highway district, and if necessary, the bond levy shall be increased in the following year to make good that deficiency. No failure or delay on the part of the highway district in imposing, levying or collecting the special taxes shall, as between the district and the bondholders, impair the obligation of the highway district upon the whole of the bonds.

History.

I.C., § 40-811, as added by 1985, ch. 253, § 2, p. 586.

§ 40-812. Collection of taxes in special tax districts. — The land within each special tax district is charged with a lien in favor of the highway district to the extent of the entire amount of all special taxes levied on the land within the special tax district in accordance with the provisions of this title. The amounts levied, both as to principal and interest, shall be assessed and collected by the tax collector as other taxes in the highway district are assessed and collected, and all the provisions of highway district law shall apply to the collection and the rights and remedies in respect to them. The portion of the amount of any bond issues of any highway district as shall be assessed and charged against land within special tax districts, shall be deducted and excluded in computing the two per cent (2%) bond limit of the highway district imposed by [section 40-1101, Idaho Code](#).

History.

[I.C., § 40-812](#), as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 365 et seq.

§ 40-813. Liability of special tax districts for general taxes. — All land within special tax districts shall be subject to the same taxation at the same rate as other property in the highway district for the purpose of meeting the principal and interest requirements of that portion of any bond issue which is not charged against adjoining property but is paid by the highway district as a whole. All bonds issued by a highway district shall, as to a specified portion of the indebtedness created, not exceed fifty per cent (50%), be met and paid by special taxation upon the land adjoining the highways built with the proceeds of the bonds, not exceed a specified sum per acre, and as to the remaining portion shall be met and paid by taxation of all property in the highway district, including the property within special tax districts, and including all property within any incorporated cities included within the limits of the highway districts.

History.

I.C., § 40-813, as added by 1985, ch. 253, § 2, p. 586.

§ 40-814. Resolutions and orders adopted by commissioners. — All resolutions and orders adopted by commissioners and boards of highway district commissioners in respect to the organization and operation of each highway district and the bonds and taxes, as they appear upon the records of the respective board, or certified copies, are legal evidence of the resolutions and orders.

History.

I.C., § 40-814, as added by 1985, ch. 253, § 2, p. 586.

§ 40-815. Estimate and levy of tax — Exception. — The commissioners must each year, at the meeting at which they are required to levy the ad valorem tax for county purposes, estimate the probable amount of ad valorem tax for highway and bridge purposes which may be necessary for the ensuing year, and must regulate and fix the amount of ad valorem highway and bridge tax, and levy them. When all of the territory of a county is included in one or more highway districts the commissioners shall not regulate, fix or levy any tax for highway or bridge purposes.

History.

I.C., § 40-815, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law Mandate or Contempt.

County commissioners must have made an annual estimate of the probable amount of money necessary for general road purposes, and, having used their best judgment, were not subject to mandate or contempt proceedings for violation of mandate of court. *Potlatch Lumber Co. v. Board of County Comm'rs*, 29 Idaho 399, 160 P. 256 (1916).

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 365 et seq.

§ 40-816. Indebtedness in excess of express provisions prohibited — Exceptions. — A highway district board, or other officers of the highway district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this title. Any debt or liability incurred in excess of the express provisions shall be and remain absolutely void. For the purpose of organization or for any of the purposes of this title, a highway district board may, before making the tax levy in any year, incur an indebtedness not exceeding in the aggregate a sum equal to one-tenth per cent (.1%) of the market value for assessment purposes of all the property in the highway district subject to taxation. After making the levy, they may incur an indebtedness within the limit, on the entire indebtedness, of the amount of the levy. At no time shall the total indebtedness exceed that amount and may cause warrants of the highway district to be issued, bearing interest to be fixed by the highway district. The power granted in this section is in addition to and independent of the power granted to issue bonds.

History.

I.C., § 40-816, as added by 1985, ch. 253, § 2, p. 586.

§ 40-817. Highway district taxes — Duties of county assessor. — Upon receiving a certified copy of a resolution of a highway district board, the county assessor must assess upon all property in the highway district subject to taxation the taxes so levied and certified to him. His assessment of all taxes levied by the highway district board may be computed and made upon the valuation of property as fixed by the board of equalization for county purposes, and as appears upon the assessment roll in the same year. The taxes as levied by the highway district board shall become a lien upon the property assessed from the date of the assessment, and shall be due and payable at the same time as other county taxes, and in all respects are to be collected in the same way, except that the tax collector must keep a separate list or assessment roll of them, and when paid, they must be named in his receipt to the taxpayer as a separate item. The tax collector shall pay the taxes, when collected, to the treasurer of the highway district and at the time of payment he must specify to the treasurer receiving them what taxes they are, take a separate receipt and keep separate accounts for the payment of the tax. The commissioners shall furnish the tax collector with any blanks as are needed to comply with these provisions.

History.

I.C., § 40-817, as added by 1985, ch. 253, § 2, p. 586.

§ 40-818. Limitation on levies — Penalties. — It shall be unlawful for any board of highway district commissioners or its members to levy any tax upon the property in a highway district for any purpose whatsoever in excess of the levies provided by law. Any highway district commissioner violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall forfeit his office, and it shall become vacant immediately. The vacancy in office shall be filled in the manner provided by law for filling of vacancies.

History.

I.C., § 40-818, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 40-819. Election to increase levy — Notice. — (1) Whenever the levies provided by law to be made by highway district commissioners will not, in the opinion of the highway district commissioners, produce a sufficient amount of money for the use of the highway district for their purposes, the highway district board may by order authorize the holding of an election within the highway district, at which election the voters may determine whether or not any levy for any purpose authorized by law for highway districts shall be increased to produce revenues for those purposes. If at the election the majority of the qualified voters shall vote in favor of increasing any of the levies, the levies may be increased. The increase shall not exceed an additional twenty percent (20%) of the levy authorized by law for that purpose.

(2) The highway district commissioners shall designate the date of the election that is in accordance with the dates authorized in [section 34-106, Idaho Code](#), and which shall be held within the highway district. Notice of the election shall be given by the county clerk in accordance with the provisions of title 34, Idaho Code, and [section 40-206, Idaho Code](#). The notice shall state:

- (a) The time and place of holding the election;
- (b) The amount of money which the levy authorized by law to be made by the highway district commissioners will produce;
- (c) The amount of money in excess of each of the levies desired to be raised by the highway district commissioners, and generally the purpose for which the additional money is to be used;
- (d) If at the election a majority of the qualified voters voting vote in favor of increasing the levy that the levy may be increased in an amount not exceeding twenty percent (20%) of the levy provided by law; and
- (e) The additional levy, if authorized by a majority vote at the election, will when added to the levy provided by law provide sufficient money for the particular purpose of which the levy is authorized.

History.

I.C., § 40-819, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 72, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (2), in the first sentence, substituted “designate the date of the election” for “designate the time and place of holding the election” and inserted “that is in accordance with the dates authorized in [section 34-106, Idaho Code](#)” and “held,” deleted the second sentence, which read: “The election shall be held between the fifteenth of June and the fifteenth of August of the year in which the levy is to be made,” and, in the third sentence, substituted “given by the county clerk in accordance with the provisions of title 34, Idaho Code, and [section 40-206, Idaho Code](#)” for “given by posting notices in three (3) public places within the highway district at least fifteen (15) days prior to the election and by publishing the notice in accordance with the provisions of [section 40-206, Idaho Code](#).”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-820. Expenditures in emergencies. — In the event of a great public disaster, or if it is necessary to do emergency work to prepare for national or local defense, the board of highway district commissioners may pass a resolution declaring the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the highway district board may expend any sum required in the emergency without complying with this title.

History.

I.C., § 40-820, as added by 1985, ch. 253, § 2, p. 586.

§ 40-821. Treasurer of highway district — Duties. — It is the duty of the treasurer of a highway district to keep accounts of the district and to place to the credit of the district all moneys received by him, and to pay over all moneys belonging to the district on legally drawn warrants or orders of the district officers entitled to draw them.

History.

I.C., § 40-821, as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 163 et seq.

§ 40-822. Detached territory — Order determining apportionment of indebtedness — Special levy. — (1) A board of highway district commissioners shall enter upon its records an order determining the net proportionate share of the indebtedness of the highway district incurred prior to a detachment of territory for which the detached territory should be and remain liable.

(2) Notwithstanding the detachment of territory with respect to the future operations and conduct of the district, the board of highway district commissioners shall annually levy upon all the property within the detached territory a special tax sufficient to pay as it falls due, the principal and interest of that proportionate share of the prior indebtedness of the district for which the detached territory is and shall remain liable. The special tax shall be levied at the same time, certified, and collected in the same manner as are the other taxes levied by the district, but after detachment the detached territory or the property in the district shall not be subject to taxation by a highway district for future operations of the district or for the repayment of any indebtedness subsequently incurred by the district.

History.

I.C., § 40-822, as added by 1985, ch. 253, § 2, p. 586.

§ 40-823. Levy to pay indebtedness upon division of district. — Whenever there is a division of a highway district and an amount is found to be due from either of the districts to the other, and where a warrant or warrants have been drawn for the amount due payable to the creditor district, and the levy for the first year is found to be insufficient for the payment of the warrant or warrants, it shall be the duty of the board of highway district commissioners of the debtor district to levy annually a tax sufficient to pay at least twenty-five per cent (25%) of the warrant indebtedness annually, or so much of the warrant indebtedness as the limit of levying taxes by a highway district as prescribed by law will permit. The highway district commissioners of the former district shall annually levy an ad valorem tax for both the former and the new district for the purpose of providing a sinking fund to pay the bonded indebtedness of the former district at the time of the division. Upon any levy being made by the board of highway district commissioners of the former district, it shall be the duty of the clerk of that board to transmit to the board of highway district commissioners of the new district a certified copy of the resolution providing for the tax. It shall be the duty of the board of highway district commissioners of the new district to spread the resolution on its minutes, and a tax shall be levied on the new district in accordance with the resolution and collected in the same manner as other special highway district taxes are collected. The moneys shall be paid as soon as collected by the tax collector of the county in which the new district is situated, to the treasurer of the former district who shall credit the tax moneys to the sinking fund to liquidate the existing bonded indebtedness.

History.

I.C., § 40-823, as added by 1985, ch. 253, § 2, p. 586.

§ 40-824. Computation and payment of indebtedness of dissolved district situated in two or more counties. — In the case of dissolved highway districts situated in two (2) or more counties, the commissioners of the county having jurisdiction of the dissolution of the district shall compute the indebtedness of the entire district and shall provide for the payment of the indebtedness out of the district funds on hand, or to be raised by special levies, which shall be determined and levied by the county, and shall be certified to the clerk of the commissioners of each of the counties in which is situated any part of the dissolved district. The tax shall be levied and imposed by each of the counties upon the property of the former district as may be within the county, the tax collected and, not less than quarterly, be remitted to the treasurer of the succeeding operational unit to be applied in payment of the indebtedness of the district.

History.

I.C., § 40-824, as added by 1985, ch. 253, § 2, p. 586.

§ 40-825. Levies to pay claims against dissolved or consolidated systems and districts — Certification and assessment — Issuance of new highway users' fund bonds. — After dissolution of a county or city highway system or a highway district, or upon a consolidation of districts, and at the next regular annual meeting of the succeeding operational unit when levies for other county purposes are fixed, the succeeding highway system board shall in addition to apportioning moneys arising out of the highway users' fund and the moneys from all other sources as the system or district would be entitled to receive had it not been dissolved and all other tax levies, including general highway and bridge levies, levy a special tax upon all of the property situated within the former boundaries of any former system or district, sufficient to raise funds for the payment of all remaining unpaid current claims against or debts of the former system or district, together with funds for payment of current and accruing terms and conditions of outstanding bonds and warrants of the former system or district. Each following year they shall continue that levy, or make other or additional levies as may be required to fully pay and retire the indebtedness of the former county or city highway system or highway district. The taxes shall be collected in the same manner as other county taxes and shall be turned over to the treasurer of the succeeding operational unit, who shall redeem, or post for redemption, all warrants and bonds as they mature and in order of their line, and for which funds are available from the former system or district for the payment of them. The succeeding operational unit, whenever it may deem it necessary or expedient, has the power to issue highway users' fund bonds for and on behalf of the former system or district and of the same force and effect as if validly issued by the board of highway commissioners or councilmen of the former system or district during its existence. All bonds shall be in form and issued, registered, sold or exchanged and redeemed in accordance with the provisions of chapter 2, title 57, Idaho Code, and of general law relating to bond issues.

History.

I.C., § 40-825, as added by 1985, ch. 253, § 2, p. 586.

§ 40-826. Collection of taxes — Disposition upon collection. — Taxes levied shall become a lien upon the property so assessed from the date of assessment and shall be due and payable at the same time as other county taxes. The taxes shall be collected in the same way, except that the tax collector must keep a separate list or assessment roll of them; and when paid, they must be named in his receipt to the taxpayer as a separate item. The tax collector shall pay the taxes collected to the treasurer of the succeeding district, and at the time of payment must specify to the treasurer receiving them what taxes they are, take a separate receipt, and keep a separate account for the payment of taxes. The commissioners shall furnish the tax collector with blanks as are needed to comply with the provisions of this section.

History.

I.C., § 40-826, as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 375 et seq.

§ 40-827. Authorization for voters to approve vehicle registration fee.

— (1) Notwithstanding the provisions of [section 49-207, Idaho Code](#), the voters of any county may authorize the board of county commissioners to adopt an ordinance by majority vote of the board of county commissioners to implement and collect a motor vehicle registration fee not to exceed two (2) times the amount established in [section 49-402, Idaho Code](#). The authorization to adopt, implement, and collect a vehicle registration fee may be made by the registered voters of the county only at a general election and a simple majority of the votes cast on the question shall be necessary to authorize the fee.

(2) In any election, the ordinance submitted to the county voters shall: (a) state the exact rate of the fee; and (b) state the duration of the fee.

No rate shall be increased and no duration shall be extended without the approval of the voters, by a simple majority of the votes cast.

An election to approve or disapprove the adoption of a vehicle registration fee increase may be called for by the adoption of an ordinance by majority vote of the board of county commissioners or shall be called upon a request in writing from the governing board of each of the local highway jurisdictions in the county or ten per cent (10%) or more of the number of qualified voters voting in the last general election in each county commissioner subdistrict.

(3) Any county adopting an ordinance for a vehicle registration fee increase shall contract with the department for the collection, distribution, and administration of the fee in a like manner, and under the definitions, rules, and regulations for the collection and administration of other registration fees as set forth in chapter 4, title 49, Idaho Code. Each month, following receipt by the department of revenues from the implementation of a vehicle registration fee increase, the department shall remit the same to the county implementing such fee, less a deduction for such amount for the department's actual costs for collection and administration of the fee, but not to exceed one and one-half per cent (1 ½%). The increased vehicle registration fee shall not become part of the state highway account or the state highway distribution account.

(4) The local highway jurisdictions in the county shall use the funds generated by the increased vehicle registration fee exclusively for the construction, repair, maintenance, and traffic supervision of the highways within their respective jurisdictions and the payment of interest and principal of obligations incurred for said purposes.

(5) Sections 49-404, 49-405, 49-408, 49-409, 49-410, 49-414, 49-415 and 49-416, Idaho Code, shall be subject to the provisions of this code section.

(6) Such funds generated from the optional vehicle registration fee increase shall be distributed as provided by written agreement approved by each of the local highway jurisdictions in the county or, if no agreement is adopted, as follows:

(a) Thirty per cent (30%) shall be apportioned among the cities, incorporated and specially chartered, in the county, in the same proportion as the population of the city bears to the total population of all the cities in the county, as shown by the last regular or special federal census.

(b) Seventy per cent (70%) shall be apportioned as follows:

(i) Twenty per cent (20%) shall be divided equally between the county highway department, where applicable, and each highway district in the county, where applicable;

(ii) Eighty per cent (80%) shall be divided between the county highway department where applicable, and each highway district in the county, where applicable, in the proportion that the number of miles of improved highways in each highway system of the county bears to the total number of improved miles of highways in the county.

History.

I.C., § 40-827, as added by 1988, ch. 353, § 1, p. 1054; am. 1989, ch. 310, § 32, p. 769; am. 1991, ch. 285, § 1, p. 733; am. 1996, ch. 203, § 1, p. 626.

STATUTORY NOTES

Effective Dates.

Section 34 of S.L. 1989, ch. 310 declared an emergency and provided that the act would become effective retroactively to January 1, 1989. Approved April 5, 1989.

Section 4 of S.L. 1991, ch. 285 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1991. Approved April 4, 1991.

Chapter 9

CONTRACTS — BIDS

Sec.

40-901. Application.

40-902. Bids — State highway system.

40-903. County, city or highway district bid prohibited.

40-904. Contracts — Design build.

40-905. Contracts — Construction manager/general contractor.

40-906 — 40-912. [Repealed.]

40-913. Resolution for use of day labor — Materials or supplies purchased on the open market.

40-914 — 40-926. [Repealed.]

§ 40-901. Application. — The requirements for contracts and bids that apply to all county highway systems and highway districts of the state shall be subject to the provisions of chapter 28, title 67, Idaho Code, in concert with the provisions of any specific statute pertaining to the letting of any contract or the purchase or acquisition of any commodity or thing by any system or highway district by soliciting and receiving competitive bids, and shall not be construed as modifying or amending the provisions of any statute, nor preventing the district from doing any work by its own employees.

History.

I.C., § 40-901, as added by 1985, ch. 253, § 2, p. 586; am. 2005, ch. 213, § 7, p. 637.

STATUTORY NOTES

Prior Laws.

The following sections comprising part of former chapter 9 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-901 to 40-908. R.S., §§ 960-967; reen. R.C. & C.L., §§ 943-950; C.S., §§ 1366-1373; I.C.A., §§ 39-801—39-808.

40-909. 1921, ch. 182, § 1, p. 377; I.C.A., § 39-809.

40-910. 1885, p. 162, § 40; R.S., § 968; am. 1899, p. 405, § 2; reen. R.C., § 951; am. 1911, ch. 60, § 1, subd. 951, p. 165; reen. C.L., § 951; C.S., § 1374; I.C.A., § 39-810.

40-911. 1885, p. 162, § 41; R.S., § 969; reen. R.C. & C.L., § 952; C.S., § 1375; I.C.A., § 39-811.

40-912 to 40-914. 1917, ch. 114, §§ 1-3, p. 394; reen. C.L., §§ 952a-952c; C.S., §§ 1376-1378; I.C.A., §§ 39-812 to 39-814.

40-915. 1885, p. 162, § 28; R.S., § 970; reen. R.C. & C.L., § 953; C.S., § 1379; I.C.A., § 39-815.

40-916. R.S., § 971; reen. R.C. & C.L., § 954; C.S., § 1380; I.C.A., § 39-816.

§ 40-902. Bids — State highway system. — (1) Whenever work on the state highway system is let by contract, advertisement for sealed bids must be provided for at least two (2) consecutive weeks in one (1) newspaper, having a general circulation in the county or one (1) of the counties, where the work is to be done. In addition, the department may use any medium reasonably determined to reach prospective bidders.

(2) Each bid must be accompanied by a cashier's check or a certified check in favor of the department on some bank in the state of Idaho, or by a bidder's bond, for the sum of five percent (5%) of the amount of the bid, to be forfeited if the bidder, upon acceptance of his bid, fails or refuses to enter into a contract within fifteen (15) days after the presentation of the contract by the department to him for execution and to furnish the required bond. Checks and bonds of unsuccessful bidders shall be returned immediately after the contract is awarded. If the contracting agency allows electronically submitted bid documents, then a bid bond in electronic form with valid electronic signatures shall accompany the submittal of the electronic bid documents.

(3) Except as allowed by the provisions of sections 40-904 and 40-905, Idaho Code, bids shall be opened publicly at the time and place specified in the advertisement and the contract let to the lowest responsible bidder, but the department has the right to reject any and all bids, or to let the contract for a part or all of the work.

(4) If no satisfactory bid is received, new bids may be called for, or the work may be performed by day labor, or as may be determined by the department.

(5) Except as allowed by the provisions of sections 40-904 and 40-905, Idaho Code, a bidder who did not submit the lowest responsible bid as determined by the department may within five (5) calendar days of bid opening file a written application to challenge the department's determination of the lowest responsible bidder and apply to the department's chief engineer for the appointment of a hearing officer to hold a contested case hearing. The application shall set forth in specific terms the reasons why the department's decision is thought to be erroneous. Upon

receipt of an application, the chief engineer shall appoint a hearing officer with the authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code. Upon receipt from the hearing officer of findings of fact, conclusions of law and a recommended order, the chief engineer shall review the same and enter a final order sustaining or reversing the decision of the department on the selection of the lowest responsible bidder. Following entry of the final order, the chief engineer shall have the authority to award the contract to the bidder determined in the final order to be the lowest responsible bidder at a time and in a manner which shall be in the best interest of the state.

History.

I.C., § 40-902, as added by 1985, ch. 253, § 2, p. 586; am. 2004, ch. 233, § 1, p. 685; am. 2005, ch. 125, § 1, p. 409; am. 2010, ch. 293, § 13, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-902 was repealed. See Prior Laws, § 40-901.

Amendments.

The 2010 amendment, by ch. 293, in subsection (1), substituted “advertisement for sealed bids must be provided for at least two (2) consecutive weeks in one (1) newspaper” for “sealed bids must be called for by public advertisement in at least two (2) consecutive weekly issues in a weekly newspaper or five (5) issues in a daily newspaper,” and added the last sentence; and in subsections (3) and (5), added the exceptions at the beginning.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-903. County, city or highway district bid prohibited. — No county, city or highway district shall bid on any state highway system construction project which is let by competitive bid by the Idaho transportation board; provided, however, the provisions of this section shall not prohibit the Idaho transportation board, a county, a city or a highway district from entering into agreements with one another for joint or cooperative action pursuant to the provisions of chapter 3, title 40, or chapter 23, title 67, Idaho Code.

History.

I.C., § 40-903, as added by 1987, ch. 303, § 2, p. 643.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-903, which comprised I.C., § 40-903, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1987, ch. 303, § 1.

Another former § 40-903 was repealed. See Prior Laws, § 40-901.

§ 40-904. Contracts — Design build. — (1) The preferred contracting method of the department shall be as described in [section 40-902, Idaho Code](#). The department may select design-build firms and award contracts for design-build projects if the board determines that the projects are of appropriate size and scope, that awarding a design-build contract will serve the public interest, and that the method is superior to that described in [section 40-902, Idaho Code](#). The following criteria shall be used as the minimum basis for determining when to use design-build contract procedures:

- (a) Project suitability for design-build method contracting regarding time constraints, costs and quality factors;
- (b) The availability, capability and experience of potential design-build firms;
- (c) The department's ability to manage design-build projects, including employing experienced personnel or outside consultants; and
- (d) Other criteria the department deems relevant and states in writing in its determination to use design-build contract procedures.

(2) No more than twenty percent (20%) of the department's annual highway construction budget for the state transportation improvement program shall be used for design-build and construction manager/general contractor contracts combined.

(3) No less than thirty percent (30%) of any design-build contract awarded shall be self-performed by the design-build firm awarded such contract.

(4) A professional engineer licensed in the state of Idaho shall have responsible charge of preparing the request for qualifications (RFQ) and request for proposals (RFP) including the base technical concept. The term "responsible charge" shall be as defined in [section 54-1202, Idaho Code](#). The professional engineer shall not be affiliated with any design-build firm submitting proposals on the project.

(5) For each proposed design-build project, the department shall designate an evaluation committee. The evaluation committee shall include at least five (5) members who are qualified by education and experience, and at least two (2) of whom shall be professional engineers licensed in the state of Idaho. To assist in the evaluation process, the evaluation committee may retain the services of nonvoting members.

(6) Any design-build firm, regardless of its organizational structure, must comply with all applicable requirements of chapter 12, title 54, Idaho Code. The designer shall employ a professional engineer licensed in the state of Idaho who is in responsible charge of all engineering on the design-build project for the design-build firm. The term “responsible charge” shall be as defined in [section 54-1202, Idaho Code](#).

(7) Any design-build firm regardless of its organizational structure, must comply with all applicable requirements of chapter 19, title 54, Idaho Code.

(8) Any Idaho professional engineering licenses required shall be obtained prior to submittal of a design-build firm’s proposal. The design-build firm shall obtain any required Idaho public works licenses prior to submitting a proposal unless the project involves federal funds. If the project involves federal funds, then the design-build firm shall obtain any required Idaho public works licenses prior to contract award.

(9) The department shall have the authority to discontinue the design-build firm selection process at any time prior to the opening of price proposals, subject to any applicable obligation to pay a stipend.

(10) After short-list selection and contract award, and upon written request, all unsuccessful design-build firms shall be afforded the opportunity for a debriefing. Debriefings shall be provided at the earliest feasible time after a design-build firm has been selected for award. The debriefing shall:

(a) Be limited to discussion of the unsuccessful design-build firm’s proposal and shall not include specific discussion of a competing proposal.

(b) Provide information on areas in which the unsuccessful design-build firm’s proposal had weaknesses or deficiencies.

(c) Maintain the confidentiality of evaluation committee members and other design-build firms.

(11) The department shall establish and determine the appropriate design-build contract method to select design-build firms and award contracts on a project-by-project basis. The method shall be stated in the request for proposals, and in the request for qualifications when applicable. The department shall use a two-step selection process for all projects. Design-build selection and contract methods that may be used are:

(a) Best value;

(b) Fixed price-best design; or

(c) Lowest price-technically acceptable. The department may only use the lowest price-technically acceptable method when:

(i) The preliminary design is completed and the design-build firm's role is limited to completing the final design and constructing the design-build project;

(ii) No right-of-way must be acquired by the design-build firm;

(iii) No utility or railroad permits must be obtained by the design-build firm;

(iv) The department obtains the required environmental clearances; and

(v) The department has determined that meeting the minimum technical and designer qualification requirements is sufficient for the project and that innovation or alternatives are not required.

(12) The department shall advertise for request for qualifications and request for proposals in accordance with the procedures outlined in [section 40-902\(1\), Idaho Code](#).

(13) The RFQ and RFP shall address potential organizational conflicts of interest.

(a) No person or business entity that assisted the department in preparing the solicitation documents will be allowed to participate as a design-build firm or as a member of the design-build firm's team; however, the

department may determine that there is not an organizational conflict of interest where:

- (i) The role of the person or business entity was limited to provision of preliminary design, reports, or similar “low-level” documents that may be incorporated into the solicitation but did not include assistance in the development of instructions to design-build firms or evaluation criteria; or
 - (ii) All documents and reports delivered to the department by the person or entity are made available to all potential design-build firms.
- (b) The design-build firm shall disclose all relevant facts concerning any past, present, or currently planned interests that may present an organizational conflict of interest.
- (c) If at any time during the selection process or during the contract period a previously undetermined organizational conflict of interest arises, the design-build firm must disclose that information as soon as discovered and mitigate or eliminate the conflict.

(14) At a minimum, the following shall be included in each request for qualifications (RFQ):

- (a) Minimum design-build firm qualifications necessary to meet the project’s design-build requirements;
 - (i) Relevant construction-related experience and performance;
 - (ii) Financial, personnel and equipment resources available for construction;
 - (iii) Designer qualifications;
 - 1. Experience and performance of the designer on similar projects;
 - 2. Qualifications and relevant experience of the designer’s project manager and key personnel;
 - 3. Available resources of the designer.
- (b) Scope of work statement and schedule;
- (c) Documents defining the project requirements;
- (d) Maximum time allowed for project design and construction;

- (e) Estimated cost of project design and construction;
- (f) Requirements for key personnel;
- (g) Scoring criteria for evaluating the qualifications submitted; and
- (h) The number of firms to be short-listed. The number of firms short-listed shall be no less than two (2) or more than five (5).

(15) The criteria for evaluation of qualifications may include, without limitation:

- (a) Technical qualifications for construction, such as specialized experience and technical competence, including key personnel;
- (b) Capability to perform construction, including the availability of key personnel;
- (c) Designer qualifications;
- (d) The proposed plan of the design-build firm to manage the design and construction of the project;
- (e) Understanding of and approach to the project;
- (f) Organizational conflicts of interest;
- (g) Other appropriate qualifications-based selection factors.

(16) The RFQ shall not include any price-related factors. Designer qualifications shall be included in the selection process as a percentage of the total score based on project complexity, potential for design innovation and alternatives, and the project's impacts to the public during construction and operation. The department shall develop a short-list of the most qualified design-build firms from the proposals submitted in response to the request for qualifications. If only a single design-build firm responds to the RFQ or remains on the short-list, the department may issue a new RFQ or cancel the solicitation.

(17) The department shall provide to each design-build firm that submitted qualifications the summary of scores of all proposers and the design-build firms' evaluation worksheets within three (3) business days following notification of the short-list. The confidentiality of the evaluation committee members and other design-build firms shall be maintained.

(18) Design-build firms that submit qualifications and that do not qualify for the short-list generated by the department may challenge the department's determination in accordance with the procedures outlined in [section 40-902\(5\), Idaho Code](#). A challenge must be filed with the department within seven (7) calendar days of the date the department transmitted the evaluation scores and worksheets.

(19) The department shall prepare a request for proposals (RFP) for each design-build contract. The RFP shall address the base technical concept for the design-build contract.

(20) The RFP shall define the base technical concept, the mandatory project scope elements, deliverables and the project schedule including, but not limited to:

- (a) Performance and technical requirements;
- (b) Conceptual design;
- (c) Specifications;
- (d) Functional and operational elements for the delivery of the completed project;
- (e) Description of the selection and award criteria, including the weight or relative order, or both, of each criterion;
- (f) Copies of the contract documents the selected bidder will be expected to sign;
- (g) Maximum time allowed for project design and construction;
- (h) Estimated cost of design and construction or fixed price;
- (i) A requirement that all proposals be submitted to the department in two (2) parts:
 - 1. A technical proposal; and
 - 2. A price proposal;
- (j) A requirement that all proposals be submitted in a separately sealed, clearly identified package that includes the date and time of the submittal deadline;

(k) A requirement that the technical proposal include a critical path method and bar schedule of the work to be performed, or similar schematic, design plans and specifications, technical reports, calculations, permit requirements, applicable development fees, designer qualifications as they relate to the technical proposal and other data requested in the request for proposals;

(l) A requirement that the price proposal contain all design, construction, engineering, quality control and assurance, and construction costs of the proposed project;

(m) The terms and conditions for stipends, including waiving of the stipend, and when the stipend shall be paid;

(n) The date, time and location of the public opening of the sealed price proposals;

(o) The basis for design-build firm selection and contract award;

(p) When applicable, the alternate technical concept deadline; and

(q) Other information relevant to the project.

(21) The RFP selection and award criteria shall include price, shall include the design-build firm's design and construction qualifications, and may include time of completion, innovation, design and construction quality and other technical or quality related criteria. The qualification based selection process required pursuant to [section 67-2320, Idaho Code](#), in obtaining certain consultant services is not applicable. When applicable, the percent weighting of the technical proposal score that is assigned to the designer qualifications shall be based on the project's level of design completeness prior to the RFP and the opportunity for design innovation and alternatives.

(22) As part of the RFP, and when available, the department shall make available any project specific documentation, drawings, files, reports and other pertinent materials that would be of use to the eligible design-build firms.

(23) The RFP shall address and identify contract provisions including, but not limited to:

(a) Allocation of known risks according to the type and location of the project, and the following risk factors shall be considered:

- (i) Governmental risks;
 - (ii) Regulatory compliance risks;
 - (iii) Construction phase risks;
 - (iv) Postconstruction risks; and
 - (v) Right-of-way risks;
- (b) Payment and performance bonds;
- (c) Proposal guaranty;
- (d) General and professional liability insurance;
- (e) Meetings regarding the preconstruction services;
- (f) The department's standards, rules, guidelines, and special provisions requirements;
- (g) Environmental regulatory requirements, including whether the department or the design-build firm will acquire any or all of the permits required for construction;
- (h) Design and construction requirements, including specifications;
- (i) The final documents to be provided by the design-build firm upon completion of the project, which may include "as built" plans, engineering reports, shop drawings, test results, documentation, daily reports and item quantities;
- (j) The date for submittal of the technical and price proposals; and
- (k) The date for opening the sealed price proposals.

(24) The RFP may allow design-build firms to submit one (1) or more alternate technical concepts (ATCs).

(a) ATCs will only be considered if they are determined by the department at its sole discretion to be equal to or better than the base technical concept. Typically, ATCs will improve project quality and/or reduce project costs. The department may allow preapproved ATCs as part of the design-build firm's proposal.

(b) A proposed ATC is not acceptable if it merely seeks to reduce quantities, performance or reliability, or seeks a relaxation of the contract requirements. ATCs shall be submitted by the design-build firm by the date specified within the RFP and preapproved in writing by the department prior to the proposal submittal date. All technical proposals must include the department's preapproval letters for consideration of the ATCs.

(c) A design-build firm may incorporate one (1) or more preapproved ATCs into its technical and price proposal. Each design-build firm shall submit only one (1) proposal.

(d) The price proposal shall reflect any incorporated ATCs. Except for incorporating approved ATCs, the proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

(e) The RFP will not distinguish between proposals that do not include any ATCs and proposals that include ATCs. Both types of proposals shall be evaluated against the same technical criteria, and a best value determination shall be made in the same manner.

(f) An approved ATC that is incorporated into a design-build firm's proposal will become part of the design-build contract upon award of the design-build contract to that design-build firm.

(g) ATCs properly submitted by a design-build firm and all subsequent communications regarding its ATCs shall be considered confidential prior to the award of the design-build contract.

(25) Prior to proposal submittal, the department shall offer design-build firms equal opportunity to participate in one-on-one meetings with the department regarding their proposals if the department determines that such discussions are needed. The department shall disclose to all design-build firms any issues impacting the scope of work or base technical concept that are relevant to the RFP. The department shall not disclose information pertaining to an individual design-build firm's ATCs or confidential business strategies.

(26) The technical proposal and price proposal shall be submitted concurrently. The technical proposal and price proposal shall be submitted to the department in separate sealed envelopes marked in strict accordance

with the requirements and timeline contained in the RFP, or as it may be amended.

(27) After proposals are submitted, and prior to opening the price proposals, the evaluation committee shall open, review and score or otherwise evaluate the technical proposals and any other required technical information in accordance with the evaluation criteria established in the RFP.

(28) After proposals are submitted, and prior to opening the sealed price proposals, the department may hold discussions with design-build firms during the technical proposal evaluations. Discussions shall be held with all design-build firms that submitted proposals. The department shall disclose to all design-build firms issues impacting the scope of work or base technical concept that are relevant to the RFP. The department shall not disclose information pertaining to a design-build firm's proposal, ATCs or other technical concepts. The department may issue a revised RFP that may or may not include changes in the scope, contract requirements or stipend amount. All design-build firms shall be given an opportunity to submit revised technical and price proposals that may result from the discussions.

(29) Sealed price proposals shall be kept in a secure location until read publicly. When applicable, the technical scores and best values shall be read publicly at the same time.

(30) If an RFP includes a time factor with the selection criteria, the department shall adjust the price using a department established value of the time factor. The department established value of the time factor shall be expressed as a value per day. The total time value shall be the total number of days to complete the project multiplied by the time factor. The time-adjusted price is the total time value plus the total price proposal amount.

(31) The basis for design-build firm selection and contract award shall be as follows:

(a) Best Value Method: Each proposer's price proposal, time adjusted if applicable, is divided by the technical proposal score to obtain a total score. The department shall award the contract to the design-build firm whose total score is lowest.

(b) Fixed Price — Best Design Method: The department shall award the contract to the design-build firm whose technical proposal score is highest.

(c) Lowest Price — Technically Acceptable Method: The department shall award the contract to the design-build firm who meets the minimum technical and designer qualifications requirements identified in the RFP and whose price proposal is lowest.

(32) Proposals that are not responsive to the RFP may be excluded from consideration. The criteria used for determining whether a proposal is not responsive shall be defined in the RFP. Design-build firms whose proposals are excluded from consideration are not eligible for payment of a stipend.

(33) At the discretion of the department, a stipend may be paid to eligible design-build firms who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based upon the department's analysis of the estimated proposal development costs, the complexity of the project and the anticipated degree of competition during the procurement process. The department shall pay the stipend within forty-five (45) calendar days after award of a contract or the decision not to award a contract.

(34) If a stipend is provided to an unsuccessful design-build firm, the work produced within that design-build firm's proposal for the project shall be provided to the department for its use in connection with the contract awarded for the project, or in connection with a subsequent procurement, without any additional compensation to the unsuccessful design-build firm.

(35) In consideration for paying the stipend, the department may use any ideas or information contained in the submitted proposals with no obligation to pay any additional compensation to the unsuccessful design-build firm.

(36) The department may either:

(a) Reject all proposals;

(b) Award a design-build contract to the design-build firm; or

(c) Award to the next ranked design-build firm, if the selected design-build firm declines the award and forfeits the proposal guaranty.

(37) The department is not required to award a contract. If the department does award a contract, a contract shall be executed and a notice to proceed shall be given to the successful design-build firm.

(38) When applicable, the department shall provide to each design-build firm that submitted proposals the summary of scores of all proposers and the design-build firms' evaluation worksheets within three (3) business days following notification of intent to award. The confidentiality of the evaluation committee members and other design-build firms shall be maintained.

(39) Design-build firms that submit proposals and are not selected for the award of the contract may challenge the department's determination in accordance with the procedures outlined in [section 40-902\(5\), Idaho Code](#). A challenge must be filed with the department within seven (7) calendar days of the date the department transmitted the evaluation scores and worksheets.

History.

[I.C., § 40-904](#), as added by 2010, ch. 293, § 14, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-904, which comprised [I.C., § 40-904](#), as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1987, ch. 303, § 1.

Another former § 40-904 was repealed. See Prior Laws, § 40-901.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-905. Contracts — Construction manager/general contractor. —

(1) The preferred contracting method of the department shall be as described in [section 40-902, Idaho Code](#). The department may select construction manager/general contractor (CM/GC) firms and award contracts for highway projects as provided herein. CM/GC highway projects shall be of appropriate size and scope to encourage maximum competition and participation by qualified firms. CM/GC procedures may be used for a specific highway project only after the board determines that awarding a CM/GC contract will serve the public interest and is superior to that described in [section 40-902, Idaho Code](#). The following criteria shall be used as the minimum basis for determining when to use CM/GC contract procedures:

- (a) Project suitability for CM/GC contracting regarding time constraints, costs and quality factors;
- (b) The availability, capability and experience of potential CM/GC firms;
- (c) The department's ability to manage CM/GC projects, including employing experienced personnel or outside consultants; and
- (d) Other criteria the department deems relevant and states in writing in its determination to use CM/GC contract procedures.

(2) No more than twenty percent (20%) of the department's annual highway construction budget for the state transportation improvement program shall be used for design-build and CM/GC contracts combined.

(3) No less than thirty percent (30%) of any CM/GC contract awarded shall be self-performed by the CM/GC firm awarded such contract.

(4) A professional engineer licensed in the state of Idaho shall have responsible charge of preparing the request for proposals (RFP). Responsible charge shall be as defined in [section 54-1202, Idaho Code](#). The professional engineer shall not be affiliated with any CM/GC firm submitting proposals on the project.

(5) Any CM/CG firm shall comply with all applicable requirements of chapter 19, title 54, Idaho Code. The requirements of chapter 45, title 54,

Idaho Code, do not apply.

(6) For each proposed CM/GC project, the department shall designate an evaluation committee. The members of the evaluation committee shall include at least five (5) members who are qualified by education and experience. To assist in the evaluation process, the evaluation committee may retain the services of nonvoting members.

(7) After award of the contract, and upon written request, all unsuccessful CM/GC firms shall be afforded the opportunity for a debriefing. Debriefings shall be provided at the earliest feasible time after a CM/GC firm has been selected for award. The debriefing shall:

- (a) Be limited to discussion of the unsuccessful CM/GC firm's proposal and shall not include specific discussion of a competing proposal;
- (b) Provide information on areas in which the unsuccessful CM/GC firm's proposal had weaknesses or deficiencies; and
- (c) Maintain the confidentiality of the evaluation committee members and the other CM/GC firms.

(8) Contracts for the services of a CM/GC shall be awarded through a competitive process requiring the public solicitation of requests for proposals for CM/GC services. The request for proposals shall include price components and meeting requirements as stated in the request for proposals.

(9) The department shall advertise requests for proposals in accordance with the procedures outlined in [section 40-902\(1\), Idaho Code](#).

(10) The RFP shall address potential organizational conflicts of interest.

(a) No person or business entity that assisted the department in preparing the solicitation documents will be allowed to participate as a CM/GC firm or as a member of the CM/GC firm's team; however, the department may determine that there is not an organizational conflict of interest where:

- (i) The role of the person or business entity was limited to provision of preliminary design, reports or similar "low-level" documents that may be incorporated into the solicitation but did not include assistance in the development of instructions to CM/GC firms or evaluation criteria; or

(ii) Where all documents and reports delivered to the department by the person or business entity are made available to all potential CM/GC firms.

(b) The CM/GC firm shall disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest.

(c) If at any time during the selection process or during the contract period a previously undetermined organizational conflict of interest arises, the CM/GC firm must disclose that information as soon as discovered and mitigate or eliminate the conflict.

(11) At a minimum, the request for proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) A description of the qualifications to be required of the firm;

(c) A description of the requirements of key personnel;

(d) A description of the process the department will use to evaluate qualifications and proposals, including evaluation and scoring criteria;

(e) Schedule of items for which the CM/GC firm shall submit unit prices;

(f) A requirement that the CM/GC firm describe its approach to pricing; and

(g) The form of the contract, including any contract for preconstruction services, to be awarded.

(12) Evaluation factors for selection of the CM/GC shall include, but not be limited to:

(a) Ability of the firm's key personnel;

(b) Financial, labor and equipment resources available for the project;

(c) Ability of the firm to meet time and budget requirements;

(d) Scope of work the firm proposes to self-perform and its ability to perform that work;

- (e) The firm's approach to working collaboratively with the department, and the department's consultant(s) when applicable, and to executing the project;
- (f) Construction experience in similar projects;
- (g) Submitted unit prices;
- (h) Approach to pricing; and
- (i) Organizational conflicts of interest.

(13) The basis for selection shall be stated in the request for proposal. Selection shall be based on the responsible proposer whose proposal is evaluated as providing the best value to the department.

(14) The contract shall be awarded in two (2) phases. The first is for services during the design phase that may include life-cycle cost considerations, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work. The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a guaranteed maximum price for construction services has been successfully negotiated. Incremental construction phases may be awarded after guaranteed maximum prices are negotiated for each phase.

(a) For the first phase, the department may either:

- (i) Reject all proposals;
- (ii) Award a contract to the best evaluated CM/GC firm; or
- (iii) Award to the next best evaluated CM/GC firm if the best evaluated CM/GC firm is determined to be nonresponsive, declines the award and forfeits the proposal guaranty or the parties are unable to reach a mutually acceptable contract.

(b) For the second phase, the department may either:

- (i) Award a construction contract or incremental construction contracts upon successful negotiations of a guaranteed maximum price; or
- (ii) Advertise, bid and award in accordance with [section 40-902, Idaho Code](#).

(15) The CM/GC shall provide performance and payment bonds during construction phases.

(16) The department is not required to award a contract. If awarded, however, a contract shall be executed and notice given to proceed with the work.

(17) The department shall provide to each CM/GC firm that submitted proposals the summary of scores of all proposers and the CM/GC firms' evaluation worksheets within three (3) business days following notification of intent to award. The confidentiality of the evaluation committee members and other CM/GC firms shall be maintained.

(18) CM/GC firms that submit proposals and are not selected for the award of the contract may challenge the department's determination in accordance with the procedures outlined in [section 40-902\(5\), Idaho Code](#). A challenge must be filed with the department within seven (7) calendar days following the date the department transmitted the evaluation scores and worksheets.

History.

[I.C., § 40-905](#), as added by 2010, ch. 293, § 15, p. 777.

STATUTORY NOTES

Prior Laws.

Former § 40-905, which comprised [I.C., § 40-905](#), as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1987, ch. 303, § 1.

Another former § 40-905 was repealed. See Prior Laws, § 40-901.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 16 of S.L. 2010, ch. 293 declared an emergency. Approved April 11, 2010.

§ 40-906 — 40-912. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 40-906 to 40-912 were repealed. See Prior Laws, § 40-901.

Compiler's Notes.

The following sections were repealed by S.L. 2005, ch. 213, § 8:

40-906. Expenditures for which bids required. [I.C., § 40-906, as added by 1985, ch. 253, § 2, p. 586; am. 1997, ch. 132, § 1, p. 399.]

40-907. Publication of notice — Documents to be made available. [I.C., § 40-907, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 1, p. 149.]

40-908. Security — Amount. [I.C., § 40-908, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 2, p. 149.]

40-909. Opening of bids. [I.C., § 40-909, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 3, p. 149.]

40-910. Failure to execute contract — Duty of commissioners. [I.C., § 40-910, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 4, p. 149.]

40-911. Awarding of contract to next lowest responsible bidder on refusal or failure to execute contract — Application of lowest bidder's security. [I.C., § 40-911, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 5, p. 149.]

40-912. Rejection of bids. [I.C., § 40-912, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 6, p. 149.]

§ 40-913. Resolution for use of day labor — Materials or supplies purchased on the open market. — After twice rejecting all bids received for the same project, the county or district commissioners may, after preparing a cost estimate and finding it to be a fact, pass a resolution declaring that the project can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution it may have the project accomplished in the manner stated. The work performed or the materials or supplies provided shall be in accordance with the same plans and specifications upon which the bids were based. A complete and accurate record shall be kept of the cost of performing the work and this cost record shall be in a form that allows easy comparison with the cost estimate. The record shall show the totals of all classes and kinds of work performed, the total cost and unit cost of each class, together with the costs of executing the work including the costs of labor, material, equipment purchased, rental of equipment, insurance, fringe benefits, superintendence and all other overhead allocable to that project, including the reasonable value of the use of equipment owned by the county or district.

History.

I.C., § 40-913, as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 79, § 7, p. 149.

STATUTORY NOTES

Prior Laws.

Former § 40-913 was repealed. See Prior Laws, § 40-901.

Idaho Code § 40-914, 40-915

§ 40-914, 40-915. Duties of contractor — Allowance of contractors' claim. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 40-914 and 40-915 were repealed. See Prior Laws, § 40-901.

Compiler's Notes.

These sections, which comprised I.C., §§ 40-914, 40-915, as added by 1985, ch. 253, § 2, p. 586, were repealed by S.L. 1987, ch. 79, § 8.

§ 40-916. Prohibited contracts — Penalty. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-916 was repealed. See Prior Laws, § 40-901.

Compiler's Notes.

This section, which comprised **I.C., § 40-916**, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 2005, ch. 213, § 8.

§ 40-917 — 40-926. Trees, felling into highway or injury to shade tree — Penalty — Bridges, maximum loads, notices, traffic regulations, notices — Penalties and forfeitures, disposition — Local law unaffected — Width of highway across stream — Passageways for stock — Damages by livestock — Bridges and culverts fortified for traction engines. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections comprising part of former chapter 9 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-917. R.S., § 972; reen. R.C. & C.L., § 955; C.S., § 1381; I.C.A., § 39-817.

40-918. 1885, p. 162, § 36; R.S., § 974; reen. R.C. & C.L., § 957; C.S., § 1383; I.C.A., § 39-818.

40-919. 1921, ch. 190, § 1, p. 392; I.C.A., § 39-819.

40-920. R.S., § 973; reen. R.C. & C.L., § 956; C.S., § 1382; am. 1921, ch. 26, § 1, p. 34; I.C.A., § 39-820.

40-921. 1890-1891, p. 190, § 13; reen. 1899, p. 127, § 14; am. R.C. & C.L., § 958; C.S., § 1384; I.C.A., § 39-821.

40-922. R.S., § 976; reen. R.C. & C.L., § 959; C.S., § 1385; I.C.A., § 39-822.

40-923. R.S., § 977; am. 1888-1889, p. 37, § 1; reen. R.C. & C.L., § 960; C.S., § 1386; I.C.A., § 39-823.

40-924. R.S., § 978; am. 1888-1889, p. 37, § 1; reen. R.C. & C.L., § 961; C.S., § 1387; I.C.A., § 39-824.

40-925. 1901, p. 185, § 1; am. R.C., § 962; reen. C.L., § 962; am. 1919, ch. 157, § 1, p. 517; C.S., § 1388; I.C.A., § 39-825; am. 1974, ch. 12, § 33, p. 61.

40-926. 1905, p. 94, §§ 1, 2; reen. R.C., § 963; am. 1911, ch. 157, p. 481; am. 1915, ch. 55, § 2, p. 143; reen. C.L., § 963; C.S., § 1389; I.C.A., § 39-

826.

Chapter 10

WARRANTS

Sec.

40-1001. Countersigning, drawing and payment.

40-1002. Nonpayment — Call.

40-1003. Notice of call.

40-1004. Notice to be mailed.

40-1005. Interest ceases ten days after call.

40-1006. Warrants bearing interest — Duties and accounts of treasurer.

40-1007 — 40-1013. [Repealed.]

§ 40-1001. Countersigning, drawing and payment. — (1) The secretary of a highway district shall countersign all drafts and warrants on the highway district treasury, and no payment of district funds shall be made except on a draft or warrant countersigned by him. He shall not countersign any draft or warrant until he has found that payment has been legally authorized, that the money for it has been duly appropriated and that the appropriation has not been exhausted.

(2) Warrants shall be drawn by and countersigned upon the order of the chairman of the highway commissioners, or in his absence, the other highway commissioners. No drafts or warrants shall be drawn except upon appropriation of the highway commissioners, nor in excess of the moneys actually in the district treasury. Warrants may be issued in anticipation of the collection of taxes, but not in excess of the amount of the levy, nor shall any warrants be issued, nor indebtedness incurred in anticipation of the levy, except as provided in [section 40-816, Idaho Code](#).

(3) When a warrant is presented for payment, if there is money in the treasury for the purpose, the treasurer must pay the same and write on the face of it, “paid,” the date of payment and sign his name.

History.

[I.C., § 40-1001](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former §§ 40-1001 to 40-1006, which comprised [I.C., §§ 40-1001 to 40-1006](#), as added by 1973, ch. 264, § 1, p. 541; am. 1975, ch. 89, § 1, p. 183; am. 1984, ch. 136, § 3, p. 321, were repealed by S.L. 1985, ch. 253, § 1.

CASE NOTES

Decisions Under Prior Law

[Claims to be allowed by board.](#)

Disregard of statute.

Subsequent allowance of illegal payment.

Claims to be Allowed by Board.

Payment of claims cannot be legally made until board, at meeting duly had, has considered and allowed same. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

Disregard of Statute.

Board of highway commissioners has no power to disregard any portion of statute or strip from it any provision in so vital matter as expenditure of funds, and their failure to consider and allow or reject claims before they were paid was a neglect of official duty. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

Subsequent Allowance of Illegal Payment.

Where secretary acted in an illegal manner in countersigning warrants for claims which had not been allowed by board of commissioners, subsequent action of board in allowing claims was a nullity. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

§ 40-1002. Nonpayment — Call. — When any warrant is presented to the district treasurer for payment, and it is not paid for want of funds, the treasurer must indorse on the back of the warrant, “not paid for want of funds,” and shall write upon it the date of presentation and sign his name. Warrants indorsed by the treasurer shall draw interest at the rate established by the district board from the date of indorsement until paid.

History.

I.C., § 40-1002, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1002 was repealed. See Prior Laws, § 40-1001.

§ 40-1003. Notice of call. — The district treasurer shall provide himself, at the expense of the district, with a bulletin board, across the top of which shall be painted or inscribed the words, “. . . . highway district warrant bulletin.” It is the duty of the treasurer to keep the bulletin board conspicuously, securely and permanently in place in his office, and upon it place in a manner which will insure continuous notice of not less than sixty (60) days all notices issued by him, whether written or printed, calling for the presentation of district warrants for payment.

History.

I.C., § 40-1003, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1003 was repealed. See Prior Laws, § 40-1001.

§ 40-1004. Notice to be mailed. — Whenever there is an amount to the credit of the district fund as shown by the books of the treasurer sufficient to pay the warrant or warrants next entitled to payment, the treasurer shall immediately place in his office a notice that the warrant or warrants will be paid on presentation, stating the number and series of the warrants. The treasurer shall send, by mail, to the record holder of the warrant notice that the warrant will be paid on presentation.

History.

I.C., § 40-1004, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1004 was repealed. See Prior Laws, § 40-1001.

CASE NOTES

Decisions Under Prior Law Failure to Call Warrants.

It was the duty of treasurer to call warrants for payment when amount provided by former law that provided for mailing of notice that warrants would be paid on presentation was on hand and his failure to do so was breach of his official duty. *Buhl Hwy. Dist. v. Allred*, 41 Idaho 54, 238 P. 298 (1925).

§ 40-1005. Interest ceases ten days after call. — Interest on any warrant shall cease on the expiration of ten (10) days from the time of the posting of the notice. For all sums which may be paid by the treasurer, as interest on any warrant, after the expiration of ten (10) days from the earliest date at which there were sufficient funds with which to have called and paid the warrant, the treasurer and his sureties shall be liable upon his official bond.

History.

I.C., § 40-1005, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1005 was repealed. See Prior Laws, § 40-1001.

CASE NOTES

Decisions Under Prior Law Liability of Treasurer.

Failure of treasurer to call outstanding warrants for payment when they should have been called renders him liable for interest accrued and unpaid since a date ten (10) days after warrants should have been called. **Buhl Hwy. Dist. v. Allred**, 41 Idaho 54, 238 P. 298 (1925).

§ 40-1006. Warrants bearing interest — Duties and accounts of treasurer. — When the treasurer pays any warrant on which interest is due, he must note on the warrant the amount of interest paid and enter on his account the amount of the interest distinct from the principal.

History.

I.C., § 40-1006, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1006 was repealed. See Prior Laws, § 40-1001.

§ 40-1007 — 40-1013. Bids — Procedure — Awarding of contracts — Resolution for use of day labor — Materials or supplies purchased on open market — Expenditures in emergencies. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., §§ 40-1007 to 40-1013, as added by 1973, ch. 264, § 1, p. 541, were repealed by S.L. 1985, ch. 253, § 1.

Chapter 11

BONDS

Sec.

40-1101. Bonds — Funding.

40-1102. Security for bonds.

40-1103. Levies for bonds in special tax districts — Refunding.

40-1104. Form of bonds — Highway district.

40-1105. Election — Issuance.

40-1106. Bonds of county.

40-1107 — 40-1115. [Repealed.]

§ 40-1101. Bonds — Funding. — Every highway district is granted the authority under [article VIII of the Idaho constitution](#) to issue negotiable coupon bonds for construction, improvements or repairs of any highways or structures in the district; for the purchase of material and machinery; for contracting highway engineering and construction; for the necessary expenses of the district in connection with these purposes; or for any or all of these or connected purposes. Every highway district is also granted the authority by resolution of its board of commissioners, without election, to issue negotiable coupon bonds for the purposes of funding or refunding any existing indebtedness, whether the indebtedness exists as warrant indebtedness or otherwise. Where an election is required under the provisions of [article VIII of the Idaho constitution](#) to authorize a bond issue, the election may be held with other elections. Elections shall be conducted by the county clerk in the same manner as county elections pursuant to title 34, Idaho Code. Authorization for the issuance, sale and redemption of bonds other than funding or refunding existing indebtedness, shall be as provided by chapter 2, title 57, Idaho Code. The total amount of bonds any district has issued and outstanding at any time shall not exceed two percent (2%) of the market value for assessment purposes of all the taxable property in the district as shown by the last preceding assessment list.

History.

[I.C., § 40-1101](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 327, § 1, p. 802; am. 2009, ch. 341, § 73, p. 993.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 11 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1101. 1866, p. 180, § 1; R.S., § 1070; reen. R.C. & C.L., § 1013; C.S., § 1442; I.C.A., § 39-1001.

40-1102. R.S., § 1071; reen. R.C. & C.L., § 1014; C.S., § 1443; I.C.A., § 39-1002.

40-1103. R.S., § 1072; reen. R.C., § 1015; compiled and reen C.L., § 1015; C.S., § 1444; I.C.A., § 39-1003.

40-1104. R.S., § 1073; reen. R.C. & C.L., § 1016; C.S., § 1445; I.C.A., § 39-1004.

40-1105. R.S., § 1074; reen. R.C. & C.L., § 1017; C.S., § 1446; I.C.A., § 39-1005.

40-1106. R.S., § 1075; reen. R.C., § 1018; compiled and reen. C.L., § 1018; I.C.A., § 39-1006.

Amendments.

The 2009 amendment, by ch. 341, in the third sentence, deleted “a special election or it may be” following “the election may be”; and, in the fourth sentence, deleted “as nearly as possible” following “conducted,” inserted “by the county clerk,” and added the title reference.

Compiler’s Notes.

Section 2 of S.L. 1986, ch. 327, read: “All elections which have been held for the purpose of incurring indebtedness and financing projects and all bonds which have been issued pursuant to Chapter 253, Laws of 1985, between July 1, 1985, and the effective date of this act, are hereby validated.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CASE NOTES

Decisions Under Prior Law

[Apportionment, retirement of bonds.](#)

[Constitutionality.](#)

[Equitable estoppel as to retirement of bonds.](#)

[Sale of bonds.](#)

[Apportionment, Retirement of Bonds.](#)

Where the plaintiff district and another district were organized to take over a part of the defendant highway district, the basis for the apportionment among the districts to compute the amount each would pay annually for the retirement of outstanding bonds at the time of the separation was the relative assessed valuations of the districts and not their automobile license fees. *Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.*, 65 Idaho 260, 142 P.2d 579 (1943).

Constitutionality.

Highway district law did not deprive owner of property without due process of law or deny the equal protection of the law, in the issuance of road and bridge bonds. *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927).

Equitable Estoppel as to Retirement of Bonds.

Where a plaintiff district and another district were organized to take over part of the defendant highway district, and the plaintiff participated with the defendant in the disposition of automobile license fees, and used ad valorem taxes to pay its share of the bonds, there was an “equitable estoppel” against the plaintiff from complaining because all of the defendant’s license fees were not applied on the bonds before an ad valorem levy was made. *Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.*, 65 Idaho 260, 142 P.2d 579 (1943).

Sale of Bonds.

Arrangement authorizing sale of highway bonds at less than par was in direct violation of former law regarding bonds for funding highway projects. *Municipal Sec. Corp. v. Buhl Hwy. Dist.*, 35 Idaho 377, 208 P. 233 (1922).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, § 40 et seq.

64 Am. Jur. 2d, Public Securities and Obligations, § 1 et seq.

C.J.S. — 11 C.J.S., Bonds, § 1 et seq.

39A C.J.S., Highways, § 160.

§ 40-1102. Security for bonds. — (1) The full faith, credit, and all taxable property within the limits of a highway district, as they exist at the time of the original resolution of the respective highway district for the issuance of bonds, or may subsequently be extended, shall continue pledged, and the proper officers of the district shall continue to assess and collect on all taxable property within the limits of the highway district necessary taxes to pay the bonds and interest as they become due. Should the tax for the payment of interest on or the principal of bonds not be collected in time to meet the payment, the money must be paid out of any moneys in the general fund of the district, and the moneys used for the payment shall be repaid out of the first moneys paid into the fund from which taken, and a sum sufficient to cover the deficit shall be levied and collected in the next, or any succeeding year. Failure of the officers of the district to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

(2) No bond issued shall be invalidated, annulled, or set aside on account of any defect, irregularity, omission, informality, or failure to comply with the provisions of this title, unless it shall appear to the court that a substantial injury has been or is about to be suffered by the property owners and taxpayers of the district. Bond issues shall rest upon the consent of the taxpayers and the credit of the district shall not be injured by the cancellation of securities when issued.

(3) The district may recite in the bonds that all acts requisite to the issue of them have been duly and regularly performed and fully complied with, and that they are duly and regularly issued, and as affecting innocent purchasers, the recital shall be conclusive.

History.

I.C., § 40-1102, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when other otherwise provided, § 18-113.

Prior Laws.

Former § 40-1102 was repealed. See Prior Laws, § 40-1101.

§ 40-1103. Levies for bonds in special tax districts — Refunding. —

Should any bond issue where the indebtedness has been charged in part against adjoining property be funded or refunded so that a sinking fund for the original issue is not required to be established, then the annual levy for sinking fund requirements need not be made upon the land in the special tax districts created in respect to the bond issue; or, at the option of the highway district commissioners, a portion of the bond issue, to meet a sufficient amount which has been charged against the special tax districts, may remain without refunding, and shall subsequently be paid and retired with the proceeds of the special taxes on the land within the special tax districts. If the proceeds prove temporarily insufficient, then they shall be paid from the other revenues of the district. If the whole of an issue is refunded and new bonds issued, then the land within the special tax districts shall continue to be specially taxed for the new bonds, equal in amount to the refunding issue equably, both as to principal and interest, with the taxation of the district at large for the bond purposes. On the funding of any issue of bonds, on receiving from the treasurer of the district a certificate, under the seal of the district, signed by the secretary and treasurer of the district and either by the chairman or by the other highway district commissioners that the bonds have been actually funded and retired, the special assessment made against the land within the special tax districts created for the bond issue as provided in [section 40-810, Idaho Code](#), shall be canceled, vacated and annulled, and a new special levy of the same amount shall be assessed against the land in the special tax districts in respect to the new or refunding bonds.

History.

[I.C., § 40-1103](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1103 was repealed. See Prior Laws, § 40-1101.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 144 et seq.

§ 40-1104. Form of bonds — Highway district. — In case a vote is in favor of charging part of the indebtedness to be created by a bond issue against adjoining land, the bonds may be issued and the proceedings shall be as provided by chapter 2, title 57, Idaho Code, except where other special provisions on the subject are provided by sections 40-1103 and 40-808 through 40-813, Idaho Code.

History.

I.C., § 40-1104, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1104 was repealed. See Prior Laws, § 40-1101.

§ 40-1105. Election — Issuance. — The election and all acts and proceedings had and taken in connection by highway district commissioners in respect to bonds and the levy of ad valorem taxes for the construction, improvement or repair of highways are legalized, approved and validated and constituted the negotiable legal obligations of the highway district, where:

(1) A two-thirds (2/3) majority of the qualified electors of the highway district voting on the proposition voted in favor of the issuance of bonds of the highway district;

(2) Notice of the election was given as essentially provided by [section 40-206, Idaho Code](#);

(3) The canvass of the vote revealed the required majority was recorded in the records of the highway district commissioners, and a resolution adopted and recorded in the district records authorizing the issuance of bonds of the district;

(4) The maturity of the bonds was within thirty (30) years;

(5) A rate of interest was prescribed and an ad valorem tax upon all taxable property in the district sufficient to pay the bonds as maturity was levied; and

(6) The bonds were in an amount not exceeding ten per cent (10%) of the assessed valuation if sold and delivered prior to July 1, 1980, or two per cent (2%) of the market value for assessment purposes if sold and delivered on or after July 1, 1980, of all taxable property of the highway district, and the proceeds received by the treasurer of the highway district and expended in the construction, improvement or repair of highways located within the highway district.

History.

[I.C., § 40-1105](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1105 was repealed. See Prior Laws, § 40-1101.

§ 40-1106. Bonds of county. — Nothing in this chapter shall be construed as a limitation of the power of the commissioners to issue bonds for the construction or the repairs of highways and bridges. Whenever the commissioners shall issue bonds for the construction or repair of highways and bridges under the provisions of chapter 19, title 31, Idaho Code, upon the authorization of two-thirds (2/3) of the qualified electors of the county voting at an election held for that purpose, pursuant to a resolution of the commissioners and entered upon their journal specifying, describing and defining the highways or bridges to be constructed or repaired, and giving the termini and the general course of each highway and the approximate location of each bridge it is proposed to construct, and appropriating a specific amount for any highway or bridge wholly or partially within any organized highway district, then the commissioners shall have full jurisdiction and power to locate and construct or repair the highway or bridge within the highway district, and to apply a specific appropriation so derived from the issue of bonds or so much of them as may be necessary.

History.

I.C., § 40-1106, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1106 was repealed. See Prior Laws, § 40-1101.

§ 40-1107 — 40-1115. License and toll rate — Bond — Bridges and ferries connecting counties — Disqualification of county commissioner — Distance between bridges and ferries — Condemnation of land — Posting rates of tolls — Disposal of license money — Care of banks. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1107 to 40-1112. R.S., §§ 1076-1081; reen. R.C. & C.L., §§ 1019 to 1024; C.S., §§ 1448 to 1453; I.C.A., §§ 39-1007 to 39-1012.

40-1113. 1864, p. 440, § 8; R.S., § 1082; reen. R.C., § 1025; compiled and reen. C.L., § 1025; C.S., § 1454; I.C.A., § 39-1013.

40-1114. R.S., § 1083; reen. R.C. & C.L., § 1026; C.S., § 1455; I.C.A., § 39-1014.

40-1115. R.S., § 1084; reen. R.C. & C.L., § 1027; C.S., § 1456; I.C.A., § 39-1015.

Chapter 12

BRIDGES

Sec.

40-1201. Interstate bridges on state highways — Maintenance and control.

40-1202. Petition for constructing — Notice of hearing.

40-1203. Petition hearing — Duty of highway commissioners.

40-1204. Bridges costing over five thousand dollars — Contracts for construction and repair. [Repealed.]

40-1205. Bridges — Reports.

40-1206. Maximum load — Posting of notices.

40-1207. Traffic regulations — Posting of notices — Penalty.

40-1208 — 40-1210. [Repealed.]

§ 40-1201. Interstate bridges on state highways — Maintenance and control. — When interstate bridges are located on designated state highways and designated state highways of any adjoining state, the portions of bridges within the state of Idaho shall be controlled, operated and maintained by the board, which is hereby vested with all power and authority necessary or incidental [incidental] to the maintenance, operation and control of them.

History.

I.C., § 40-1201, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former §§ 40-1201 to 40-1207, which comprised R.S., §§ 1090 to 1096; reen. R.C. & C.L., §§ 1028 to 1034; C.S., §§ 1457 to 1463; I.C.A., §§ 39-1101 to 39-1107, were repealed by S.L. 1985, ch. 253, § 1.

Compiler's Notes.

The bracketed insertion was added by the compiler to correct the spelling of the word.

§ 40-1202. Petition for constructing — Notice of hearing. — When the construction of a new bridge, for which the expenditure contemplated will exceed twenty-five thousand dollars (\$25,000), five percent (5%) or twenty-five (25) qualified voters, whichever is greater, of a county highway system or highway district system interested in it may petition the respective commissioners for the erection of the needed bridge. The commissioners shall then advertise the petition, in accordance with the provisions of [section 40-206, Idaho Code](#), giving the location and notify the director of highways to attend at a certain time and place to hear the petition.

History.

[I.C., § 40-1202](#), as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 154, § 3, p. 528.

STATUTORY NOTES

Prior Laws.

Former § 40-1202 was repealed. See Prior Laws, § 40-1201.

CASE NOTES

Decisions Under Prior Law Bridges — Part of Highway System.

Bridges are a part of the state highway system. The legislature may equally authorize the highway department (division of highways of the department of transportation) to purchase or build bridges. [Good Rd. Dist. No. 2 v. Washington County, 27 Idaho 732, 152 P. 183 \(1915\)](#); [Lyons v. Bottolfson, 61 Idaho 281, 101 P.2d 1 \(1940\)](#).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 235 et seq.

C.J.S. — 11 C.J.S., Bridges, § 14 et seq.

§ 40-1203. Petition hearing — Duty of highway commissioners. — On the day fixed to hear the petition, proof of the notice given being made satisfactory, the county or district highway commissioners shall hear the petition, examine witnesses, and determine whether or not a bridge as petitioned for is necessary. If the petition is approved the county or district highway commissioners shall determine the type of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, have the bridge erected, and provide payment for it.

History.

I.C., § 40-1203, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1203 was repealed. See Prior Laws, § 40-1201.

§ 40-1204. Bridges costing over five thousand dollars — Contracts for construction and repair. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-1204 was repealed. See Prior Laws, § 40-1201.

Compiler's Notes.

This section, which comprised **I.C., § 40-1204**, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1998, ch. 154, § 4, effective July 1, 1998.

§ 40-1205. Bridges — Reports. — The director of highways shall, in his official reports, give a full account of all bridges for which he has in whole or in part the charge and maintenance and those bridges constructed or repaired, the cost, amounts expended, from what source moneys were derived, and the present and prospective condition of the bridges.

History.

I.C., § 40-1205, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

County director of highways, §§ 40-618 and 40-619.

Prior Laws.

Former § 40-1205 was repealed. See Prior Laws, § 40-1201.

§ 40-1206. Maximum load — Posting of notices. — County or highway commissioners may limit the maximum load to be carried over and on any public bridge over which they have jurisdiction below the limit prescribed by law. In this case, the highway commissioners shall cause suitable signs to be erected and maintained at the approach to the bridge, specifying the limitation of load.

History.

I.C., § 40-1206, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1206 was repealed. See Prior Laws, § 40-1201.

§ 40-1207. Traffic regulations — Posting of notices — Penalty. — Directors of highways, or any other persons legally appointed to take charge of a bridge, may post a notice to set out and provide that no horse or mule-drawn vehicle, nor a person riding a horse or mule shall travel across the bridge or any portion of the bridge faster than at a walk; that horses, mules or cattle shall not be allowed to cross in bunches of more than twenty (20) at a time, and shall not travel faster than at a walk. The notice shall be posted in a conspicuous place and shall be in letters large enough and placed in a manner that it may be easily read by the public. Directors of highways may make other rules and regulations governing the traffic on bridges within their jurisdiction when it is deemed necessary for the safety of the public, and may post a notice of the rules in the manner provided in this section. Any person convicted for violating any of the provisions of a notice as provided for by this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300), or may be imprisoned not less than ten (10) days nor more than sixty (60) days in the county jail, or by both fine and imprisonment.

History.

I.C., § 40-1207, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

County director of highways, §§ 40-618 and 40-619.

Prior Laws.

Former § 40-1207 was repealed. See Prior Laws, § 40-1201.

RESEARCH REFERENCES

Am. Jur. 2d. — 40 Am. Jur. 2d, Highways, Streets and Bridges, § 421 et seq.

C.J.S. — 11 C.J.S., Bridges, § 95 et seq.

§ 40-1208 — 40-1210. Penalty for avoiding tolls — Acquisition of toll bridges — Toll bridges costing over \$25,000 — Private ownership. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1208. R.S., § 1097; reen. R.C. & C.L., § 1035; C.S., § 1464; I.C.A., § 39-1108.

40-1209. R.S., § 1098; reen. R.C. & C.L., § 1036; C.S., § 1465; I.C.A., § 39-1109; am. 1937, ch. 103, § 1, p. 153.

40-1210. 1909, p. 298, § 1; reen. C.L., § 1036a; C.S., § 1466; I.C.A., § 39-1110.

Chapter 13

HIGHWAY DISTRICTS

Sec.

40-1301. Districts as now organized validated.

40-1302. County division or change in boundaries — Joint highway district formed.

40-1303. Highway commissioners — Appointment — Oath.

40-1304. Division of districts into subdistricts — Vacancy in office of highway commissioner.

40-1305. Election of highway commissioners — Term of office.

40-1305A. Election administration.

40-1305B. Board of commissioners — One nomination — No election.

40-1305C. Declaration of candidacy — Qualifications.

40-1305D. Notice of election filing deadline. [Repealed.]

40-1305E. Notice of election. [Repealed.]

40-1305F. Board of commissioners — One nomination — No election. [Repealed.]

40-1305G. Write-in candidates. [Repealed.]

40-1305H. Absentee ballots. [Repealed.]

40-1305I. Conduct of election on election day. [Repealed.]

40-1305J. Canvass of votes. [Repealed.]

40-1305K. Comparison of poll lists, ballots and registration cards — Void ballots. [Repealed.]

40-1305L. Counting of ballots — Certificates of judges. [Repealed.]

40-1305M. Transmission of supplies to district office. [Repealed.]

40-1305N. Board of canvassers — Meetings. [Repealed.]

40-1305O. Board's statement of votes cast. [Repealed.]

40-1305P. Certificates of election. [Repealed.]

40-1305Q. Tie votes. [Repealed.]

40-1305R — 40-1305Z. [Reserved.]

40-1305AA. Initiating recall proceedings — Statement — Contents — Verification — Definitions. [Repealed.]

40-1305BB. Petition — Where filed. [Repealed.]

40-1305CC. Ballot synopsis. [Repealed.]

40-1305DD. Determination by magistrate court — Correction of ballot synopsis. [Repealed.]

40-1305EE. Filing supporting signatures — Time limitations. [Repealed.]

40-1305FF. Petition — Form. [Repealed.]

40-1305GG. Petition — Size. [Repealed.]

40-1305HH. Number of signatures required. [Repealed.]

40-1305II. Canvassing petition for sufficiency of signatures — Notice. [Repealed.]

40-1305JJ. Verification and canvass of signatures — Procedure. [Repealed.]

40-1305KK. Fixing date for recall election — Notice. [Repealed.]

40-1305LL. Response to petition charges. [Repealed.]

40-1305MM. Destruction of insufficient recall petition. [Repealed.]

40-1305NN. Invalid names — Record of. [Repealed.]

40-1305OO. Conduct of election — Form of ballot. [Repealed.]

40-1305PP. Ascertaining the result — When recall effective. [Repealed.]

40-1305QQ. Enforcement provisions — Mandamus — Appeals. [Repealed.]

40-1305RR. Violations by signers. [Repealed.]

40-1305SS. Violations — Corrupt practices. [Repealed.]

40-1306. Organization of highway commissioners — Meetings — Officers — Official bonds.

40-1306A, 40-1306B. [Repealed.]

40-1306C. Highway district records — Open to the public.

40-1307. Highway districts are bodies corporate.

40-1308. Power to levy taxes for comprehensive insurance, prosecuting and defending actions, judgments and liabilities.

40-1309. Corporate powers of highway districts.

40-1310. Powers and duties of highway district commissioners.

40-1311. Jurisdiction of highway district commissioners.

40-1312. Grant of powers to be liberally construed.

40-1313. District has legal title to property.

40-1314. Compensation of highway district commissioners, officers, agents and employees.

40-1315. Cost of highways — Equitable division among benefited districts.

40-1316. Annual report of highway district.

40-1317. Annual financial statement of district — Audit.

40-1318. Inspection of records by commissioners. [Repealed.]

40-1319. Director of highways — Appointment — Qualifications — Oath.

40-1320. Directors of highways — Deputy directors — Appointment — Duties.

40-1321. Deputy directors — Appointment — Duties. [Repealed.]

40-1322. Creation of local improvement districts.

40-1323. Cities included in highway districts — Powers and duties of city council.

40-1324. Jurisdiction over included territory.

40-1325. Adoption of budget — Public hearing.

40-1326. Notice of budget hearing.

- 40-1327. Public inspection of budget.
- 40-1328. Quorum of highway commissioners at budget hearing — Objections.
- 40-1329. Completion and finalization of budget. [Repealed.]
- 40-1330. Fiscal year.
- 40-1331, 40-1332. [Reserved.]
- 40-1333. Cities — Highway responsibility.
- 40-1334. Every city a highway district — Powers and duties of city council. [Repealed.]
- 40-1335. Standards for curb construction — Curb ramps for people with physical disabilities.
- 40-1336. Record books to be kept.
- 40-1337. Classification and retention of records.
- 40-1337A. Photographic or digital storage and use of highway district records.

§ 40-1301. Districts as now organized validated. — All highway districts as now organized and constituted are hereby validated and shall continue as public corporations.

History.

I.C., § 40-1301, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 1, p. 894.

STATUTORY NOTES

Prior Laws.

Former §§ 40-1301 and 40-1302, which comprised R.S., §§ 1105, 1106; reen. R.C. & C.L., §§ 1037, 1038; C.S., §§ 1467, 1468; I.C.A., § 39-1201, 39-1202, were repealed by S.L. 1985, ch. 253, § 1.

Compiler's Notes.

The phrase “as now organized” appears in S.L. 1985, ch. 253, which was effective July 1, 1985.

CASE NOTES

Decisions Under Prior Law Tort Action.

A county highway district is a political subdivision entitled to the notice required by § 6-906 for claims against it; thus the district court was correct in granting summary judgment in favor of county highway district in tort action, where plaintiff gave no timely notice of a claim but merely notified county highway superintendent after the accident that she had not been seriously injured. **Curl v. Indian Springs Natatorium, Inc.**, 97 Idaho 637, 550 P.2d 140 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Bridges and Streets, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 144 et seq.

§ 40-1302. County division or change in boundaries — Joint highway district formed. — When a county division or change in the boundaries of a county divides an existing highway district the district shall continue as a joint highway district until changed as provided by this title. It shall be the duty of the commissioners of the respective counties affected to rename the district as a joint highway district, and the renamed joint highway district shall in all things be considered a continuation of the existing district.

History.

I.C., § 40-1302, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1302 was repealed. See Prior Laws, § 40-1301.

CASE NOTES

Decisions Under Prior Law [Notice of election.](#)

[Statute of limitations.](#)

[Notice of Election.](#)

Publication of notice of election, pursuant to petition to organize highway district, was duty of clerk of board of county commissioners, and his failure properly to discharge that duty could not defeat right of petitioners to have an election, nor affect priority of right. [Huggins v. Link, 28 Idaho 185, 152 P. 1052 \(1915\).](#)

[Statute of Limitations.](#)

Suit attacking validity of the organization of highway district for failure to comply with requirements of former law regarding organization of highway districts as to publication of notice of an election to determine whether district should be organized, could not be brought after expiration of the statutory period within which such suits might be instituted. [Ditzel v. Evergreen Hwy. Dist., 32 Idaho 692, 187 P. 269 \(1920\).](#)

After expiration of time specified, action could not be maintained to enjoin issuance of highway district bonds on ground of their invalidity because of their issuance by a district organized without publication of the notice required by S.L. 1911, ch. 55, § 4, p. 123. *Ditzel v. Evergreen Hwy. Dist.*, 32 Idaho 692, 187 P. 269 (1920).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 149.

§ 40-1303. Highway commissioners — Appointment — Oath. —

There shall be three (3) highway commissioners in each district. The first highway commissioners of the highway district organized under the provisions of this chapter shall be appointed by the governor. It shall be the duty of the governor, in the appointment of the original highway commissioners, where there had been in existence any highway district within the boundary of the newly created highway district, to appoint whenever practicable, existing highway commissioners as they shall qualify by residence in the subdistricts of the newly created highway district as highway district commissioners of the newly created highway district. County commissioners, city mayors and city council members shall not be eligible to hold office as highway district commissioners. A copy of the certificate of each appointment shall be filed in the office of the county recorder of each county in which the highway district is located and with the clerk of the highway district. Every highway commissioner shall take and subscribe the official oath, which oath shall be filed in the office of the highway district commissioners.

History.

I.C., § 40-1303, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 2, p. 894.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 155 et seq.

§ 40-1304. Division of districts into subdistricts — Vacancy in office of highway commissioner. — (1) At the meeting of the county commissioners at which the highway district is declared organized, the commissioners shall divide the highway district into three (3) subdistricts, as nearly equal in population, area and mileage as practicable, to be known as highway commissioners subdistricts one, two and three. Subdistricts may be revised or modified by the highway district commissioners as changes in conditions demand. Not more than one (1) of the highway district commissioners shall be an elector of the same highway subdistrict. The first highway district commissioners appointed by the governor shall serve until the next highway district election, at which their successors shall be elected. The highway commissioners shall take office on July 1 following their election.

(2) Any vacancy occurring in the office of highway commissioner, other than by expiration of the term of office, shall be determined by the remaining highway district commissioners using the criteria established in [section 59-901, Idaho Code](#). If it is determined that a vacancy has occurred, the commissioners shall declare there is a vacancy and such vacancy shall be filled by the highway district board and be for the balance of the term of the person replaced. If the remaining highway district commissioners are unable to agree on a person to fill the vacancy within thirty (30) days after the vacancy occurs, the chairman of the county commissioners of the county with the largest number of electors in the highway district shall then become a member of the highway district board for the purpose of filling the vacancy only. If a majority of the highway district board so constituted shall be unable to agree upon a person to fill the vacancy within thirty (30) days, or if two (2) or more vacancies shall occur in the board of highway commissioners at one time, a special election to fill the vacancy shall be called and held in the same manner provided by law for the holding of elections for highway commissioners, except that the date of the election shall be as soon as possible, and all duties imposed by law upon the highway district board in connection with elections shall be performed by the county commissioners.

(3) When there are two (2) or more vacancies on the highway district board at the same time, the chairman of the county commissioners, along with the additional county commissioners that the county commission chairman appoints, and with the remaining highway district commissioner, if applicable, shall constitute a temporary board of highway district commissioners. The temporary board of highway district commissioners shall perform the duties required by law of a highway district board of commissioners until the newly elected highway commissioners take office.

History.

[I.C., § 40-1304](#), as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 123, § 2, p. 274; am. 1999, ch. 332, § 3, p. 894; am. 2006, ch. 165, § 1, p. 499; am. 2009, ch. 341, § 74, p. 993; am. 2011, ch. 11, § 23, p. 24; am. 2017, ch. 212, § 1, p. 515.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 165, divided and designated the former first paragraph as subsections (1) and (2); inserted “shall be determined by the remaining highway district commissioners using the criteria established in [section 59-901, Idaho Code](#). If it is determined that a vacancy has occurred, the commissioners shall declare there is a vacancy and such vacancy” in present subsection (2); and designated the former last paragraph as subsection (3).

The 2009 amendment, by ch. 341, at the end in subsection (1), substituted “shall take office on the date specified in the certificate of election but not more than sixty (60) days following their election” for “shall take office on October 1 following their election”

The 2011 amendment, by ch. 11, substituted “July 1” for “the date specified in the certificate of election but not more than sixty (60) days” near the end of subsection (1).

The 2017 amendment, by ch. 212, in subsection (2), substituted “thirty (30) days” for “ten (10) days” near the beginning of the last two sentences.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011 and approved February 23, 2011.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 148.

§ 40-1305. Election of highway commissioners — Term of office. —

(1) On the third Tuesday of May of the next odd-numbered year following the appointment of the first highway district commissioners, commissioners from subdistricts one and two shall be elected for a term of two (2) years and the commissioner from subdistrict three shall be elected for a term of four (4) years. Thereafter the term of office of all commissioners shall be four (4) years.

(2) A highway district whose terms and election were established by prior law shall convert to the election of commissioners as provided in subsection (1) of this section.

Each highway commissioner shall be elected on a districtwide basis.

History.

I.C., § 40-1305, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 123, § 3, p. 274; am. 2002, ch. 298, § 1, p. 853; am. 2009, ch. 341, § 75, p. 993; am. 2010, ch. 185, § 13, p. 382; am. 2010, ch. 197, § 1, p. 420.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (1), in the first sentence, substituted “third Tuesday of May” for “first Tuesday of August” and deleted the last three sentences, which read: “Highway district commissioners elected prior to January 1, 1994, for a term to expire on January 1, 1996, shall continue in office until October 1, 1995. Highway district commissioners elected prior to January 1, 1994, for a term to expire on January 1, 1998, shall continue in office until October 1, 1997. Elections for commissioners of each of the subdistricts shall continue on the schedule previously established.”

The 2010 amendment, by ch. 185, in the first sentence in subsection (1), added “and the commissioner from subdistrict three shall be elected for a term of four (4) years”; and rewrote subsection (2), revising provisions for election of highway commissioners.

The 2010 amendment, by ch. 197, deleted the former second paragraph in subsection (2), which read: “If an alternative election is held pursuant to this subsection, the highway district shall not revert to the former manner of elections and terms of office until eight (8) years after such election.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 2 of S.L. 2010, ch. 197 provided that the act should take effect on and after January 1, 2011.

CASE NOTES

Decisions Under Prior Law Defectively Organized District.

Legal existence of highway district defectively and irregularly organized could not be questioned in collateral attack by a private citizen, where it had functioned as such for over two (2) years. *Oregon Short Line R.R. v. Kimama Hwy. Dist.*, 287 F. 734 (D. Idaho 1923), aff’d, 298 F. 431 (9th Cir. 1924).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 163 et seq.

§ 40-1305A. Election administration. — Highway district elections shall be conducted in accordance with the general laws of the state, including the provisions of chapter 14, title 34, Idaho Code. The county commissioners shall select polling places and the county clerk shall appoint election judges and clerks.

The county clerk shall conduct the elections for a highway district and shall perform all necessary duties of the election official of a highway district.

History.

I.C., § 40-1305A, as added by 1994, ch. 123, § 4, p. 274; am. 2008, ch. 258, § 1, p. 751; am. 2009, ch. 341, § 76, p. 993.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 258, in the first paragraph, rewrote the first sentence, which formerly read: “Highway district commissioners shall have authority to administer highway district elections in accordance with the provisions of this chapter,” and deleted the former last sentence, which read: “In all matters not specifically covered by this chapter, the provisions of title 34, Idaho Code, shall govern the procedure for highway district elections.”

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1305B. Board of commissioners — One nomination — No election. — In any election for a highway district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict to stand for election, and the board of highway district commissioners shall declare such candidate elected as commissioner, and the secretary of the highway district shall immediately make and deliver to such person a certificate of election signed by him and bearing the seal of the district.

History.

I.C., § 40-1305B, as added by 2009, ch. 98, § 1, p. 308.

STATUTORY NOTES

Prior Laws.

Former § 40-1305B, which comprised I.C., § 40-1305B, as added by 1994, ch. 123, § 5, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305C. Declaration of candidacy — Qualifications. — (1) Candidates for election as a highway district commissioner shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the subdistrict for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific subdistrict, and be filed with the election official of the highway district. The form of the nominating petition shall be as provided by the county clerk. The nomination shall be filed not later than 5:00 p.m. on the sixth Friday preceding the election for which the nomination is made. The election official shall verify the qualifications of the nominee, and shall not more than seven (7) days following the filing certify the nominees to be placed on the ballot.

(2) A nominee shall qualify for the office of highway district commissioner if such nominee:

- (a) Has attained the age of twenty-one (21) years at the time of his election; and
- (b) Is a citizen of the United States; and
- (c) Is a resident of the highway district commissioner's subdistrict for which he seeks office.

History.

I.C., § 40-1305C, as added by 1994, ch. 123, § 6, p. 274; am. 2006, ch. 165, § 2, p. 499.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 165, inserted "Qualifications" at the end of the section heading; designated the former paragraph as subsection (1); and added subsection (2).

§ 40-1305D. Notice of election filing deadline. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305D**, as added by 1994, ch. 123, § 7, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305E. Notice of election. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305E**, as added by 1994, ch. 123, § 8, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305F. Board of commissioners — One nomination — No election. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305F**, as added by 1994, ch. 123, § 9, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305G. Write-in candidates. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305G**, as added by 1994, ch. 123, § 10, p. 274; am. 1998, ch. 307, §/1, p. 1012, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305H. Absentee ballots. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305H**, as added by 1994, ch. 123, § 11, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305I. Conduct of election on election day. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305I**, as added by 1994, ch. 123, § 12, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305J. Canvass of votes. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305J**, as added by 1994, ch. 123, § 13, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

Idaho Code § 40-1305K

**§ 40-1305K. Comparison of poll lists, ballots and registration cards
— Void ballots. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305K**, as added by 1994, ch. 123, § 14, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305L. Counting of ballots — Certificates of judges. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305L**, as added by 1994, ch. 123, § 15, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305M. Transmission of supplies to district office. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305M**, as added by 1994, ch. 123, § 16, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305N. Board of canvassers — Meetings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305N, as added by 1994, ch. 123, § 17, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305O. Board's statement of votes cast. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305O, as added by 1994, ch. 123, § 18, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305P. Certificates of election. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305P**, as added by 1994, ch. 123, § 19, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305Q. Tie votes. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305Q, as added by 1994, ch. 123, § 20, p. 274, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

« Title 40 •, « Ch. 13 », « § 40-1305R—40-1305Z »

Idaho Code § 40-1305R—40-1305Z

§ 40-1305R — 40-1305Z. [Reserved.]

« Title 40 •, « Ch. 13 », « § 40-1305AA »

Idaho Code § 40-1305AA

§ 40-1305AA. Initiating recall proceedings — Statement — Contents — Verification — Definitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305AA**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305BB. Petition — Where filed. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305BB**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305CC. Ballot synopsis. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305CC**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305DD. Determination by magistrate court — Correction of ballot synopsis. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305DD**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

**§ 40-1305EE. Filing supporting signatures — Time limitations.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305EE, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305FF. Petition — Form. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305FF, as added by 1995, ch. 245, § 1, p. 809; am. 2002, ch. 32, § 14, p. 46, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305GG. Petition — Size. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305GG**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305HH. Number of signatures required. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305HH**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305II. Canvassing petition for sufficiency of signatures — Notice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305II, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

**§ 40-1305JJ. Verification and canvass of signatures — Procedure.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305JJ**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305KK. Fixing date for recall election — Notice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305KK**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305LL. Response to petition charges. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305LL, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305MM. Destruction of insufficient recall petition. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305MM**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305NN. Invalid names — Record of. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305NN**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305OO. Conduct of election — Form of ballot. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305OO**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

**§ 40-1305PP. Ascertaining the result — When recall effective.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305PP, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

**§ 40-1305QQ. Enforcement provisions — Mandamus — Appeals.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305QQ, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305RR. Violations by signers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-1305RR**, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1305SS. Violations — Corrupt practices. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1305SS, as added by 1995, ch. 245, § 1, p. 809, was repealed by S.L. 2008, ch. 258 § 2. For present comparable provisions, see § 34-1401 et seq.

§ 40-1306. Organization of highway commissioners — Meetings — Officers — Official bonds. — (1) Immediately after qualifying and appointment and after a highway district commissioner election and the newly elected commissioners take office, the highway commissioners shall meet and organize, shall elect a chairman from their number, and shall appoint a secretary and treasurer who may also be from their number. The offices of secretary and treasurer may be filled by the same person. Certified copies of all appointments, under the hand of each of the commissioners, shall be filed with the clerk of each of the counties in which the highway district is located and with the secretary of the highway district.

(2) As soon as practicable after organization, and when deemed expedient or necessary, the highway commissioners shall designate a day, hour and place at which regular meetings shall be held, which shall be within the district or at the county seat of the county in which the district is located. Regular meetings shall be held at least quarterly. A majority of the highway commissioners may exercise all of the powers of the board of highway district commissioners.

(3) The officers of the highway district shall take and file with the district secretary an oath for the faithful performance of the duties of their respective offices. The district treasurer shall on his appointment execute and file with the district secretary an official bond in an amount as may be fixed by the highway district commissioners, which shall not be less than fifty thousand dollars (\$50,000), and shall from time to time execute and file any further bonds as required of the highway district commissioners in amounts fixed by them, which amounts shall be at least sufficient to cover the anticipated amounts of money coming into his hands, at any one (1) time, plus an additional twenty-five percent (25%).

History.

I.C., § 40-1306, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 4, p. 894.

CASE NOTES

Decisions Under Prior Law

Additional bonds.

Failure to appoint treasurer.

Minutes of board.

Additional Bonds.

Requirement of additional bonds where it was certain that funds have or will exceed 80 per cent of bond already filed was not discretionary. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

Failure to Appoint Treasurer.

Failure to appoint treasurer at the first meeting of the board was not such violation of former law regarding organization of highway commissioners as to warrant removal of commissioners from office and infliction of the statutory penalty for failure to perform their duty, where they received no funds for over four months after meeting and then amounts received were small, since no possible harm could result therefrom to district or public. *Sharp v. Brown*, 38 Idaho 136, 221 P. 139 (1923).

Minutes of Board.

Minutes of meeting of board must show claims that were considered, allowed or rejected. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

Failure of the secretary of the board to sign the minutes did not necessarily invalidate them as evidence of board action. *Mosman v. Mathison*, 90 Idaho 76, 408 P.2d 450 (1965).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 163 et seq.

§ 40-1306A, 40-1306B. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 2005, ch. 130, § 1: 40-1306A. Highway district meetings — Definitions — Open to the public — Notice of meetings. [I.C., § 40-1306A, as added by 1999, ch. 332, § 5, p. 894; am. 2000, ch. 195, § 1, p. 483.]

40-1306B. Executive sessions — When authorized. [I.C., § 40-1306B, as added by 1999, ch. 332, § 5, p. 894; am. 2000, ch. 195, § 2, p. 483.]

§ 40-1306C. Highway district records — Open to the public. — All records of the highway district are open to the public, except as provided by law. With respect to highway district records, chapter 1, title 74, Idaho Code, provides definitions, procedure for the right to examine, requests for the examination, records exempt from disclosure, copy fees, separation of exempt and nonexempt records, enforcement rights, court orders and penalties.

History.

I.C., § 40-1306C, as added by 1999, ch. 332, § 5, p. 894; am. 2011, ch. 302, § 5, p. 866; am. 2015, ch. 141, § 102, p. 379.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 302, updated an internal reference in the text of the section in light of 2011 amendments in Title 9.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “sections 9-337 through 9-351”.

§ 40-1307. Highway districts are bodies corporate. — Every highway district organized as provided by law is a body politic and corporate, and as such has the power specified in this chapter and in other statutes, including the power of eminent domain, and powers as necessarily implied from those expressed. The power of a highway district lies in the highway commissioners or by agents and officers acting under their authority or authority of law. The name of the highway district designated in the order of the commissioners declaring the territory duly organized as a highway district, shall be the corporate name of the district, and it must be known and designated by that name in all actions and proceedings touching its corporate right, property and duties.

History.

I.C., § 40-1307, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law

Character of district.

Eminent domain.

Tort liability.

Character of District.

Highway districts were quasi-municipal corporations, not political municipalities, not created for purposes of government, but for a special purpose: namely, that of improving the highways within the district. *Oregon Short Line R.R. v. Kimama Hwy. Dist.*, 287 F. 734 (D. Idaho 1923), aff'd, 298 F. 431 (9th Cir. 1924).

A highway district was not a political municipality, such as a city, but municipality created for the special purpose of assessing property for improvement of highways within district. *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912); *Fidelity State Bank v. North*

Fork Hwy. Dist., 35 Idaho 797, 209 P. 449 (1922); *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

A highway district was a separate taxing unit within Idaho Const., Art. VII, § 6, prohibiting legislature from imposing taxes for it either directly or indirectly through county in which it was situated. *Idaho County v. Fenn. Hwy. Dist.*, 43 Idaho 233, 253 P. 377 (1926).

A highway district was quasi-municipal corporation and is body politic and corporate. *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927).

Highway districts were purely business and proprietary corporations. *Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.*, 65 Idaho 260, 142 P.2d 579 (1943).

Eminent Domain.

Eminent domain proceedings, as authorized by law that provided that highway districts were bodies corporate and had eminent domain power, may be stayed pending appeal from condemnation order conditioned upon appellant's filing indemnifying bond. *Grangeville Hwy. Dist. v. Ailshie*, 48 Idaho 592, 285 P. 481 (1929); *Grangeville Hwy. Dist. v. Ailshie*, 49 Idaho 603, 290 P. 717 (1930).

Under law that provided that highway districts were bodies corporate and had power of eminent domain, a highway district was a body politic or corporate and, as such, had the power of eminent domain. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Tort Liability.

A highway district was liable for its torts and for injuries resulting from negligent construction or repair of its roads. *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 145.

ALR. — Assemblage or plottage as factor affecting value in eminent domain proceedings, 8 A.L.R.4th 1202.

Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, [21 A.L.R.4th 765](#).

Eminent domain — compensability of loss of view from owner's property — state cases, [25 A.L.R.4th 671](#).

§ 40-1308. Power to levy taxes for comprehensive insurance, prosecuting and defending actions, judgments and liabilities. — Every highway district has the power to levy and collect taxes as necessary to:

(1) Pay for a comprehensive insurance plan as provided in [section 6-927, Idaho Code](#); (2) Defray all expenses of prosecuting and defending actions; (3) Pay any judgments and liabilities incurred against it; and (4) Pay for emergencies or calamities as provided in [section 40-820, Idaho Code](#).

History.

[I.C., § 40-1308](#), as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 6, p. 894; am. 2003, ch. 68, § 2, p. 227.

CASE NOTES

Attorney Fees.

Highway district was entitled to attorney fees under § 12-117 because it was a taxing district pursuant to § 63-3101 and this section, and property owners' tort, takings, and due process constitutional claims arising from highway maintenance lacked a reasonable basis. [Halvorson v. N. Latah County Highway Dist.](#), 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Decisions Under Prior Law

Contracts and Obligations Validated.

The contracts, obligations and liabilities validated by former law that provided for ratification of prior contracts, obligations, liabilities and judgments were the contracts and obligations entered into and liabilities incurred in the conduct of the principal business for which highway districts are organized. [Filer Hwy. Dist. ex rel. Alworth v. Shearer](#), 54 Idaho 201, 30 P.2d 199 (1934).

There was not the hint in the provisions of former law that provided for ratification of prior contracts, obligations, liabilities and judgments that the legislature intended to validate the purchase of land bank bonds, by the

highway district, with sinking funds. *Filer Hwy. Dist. ex rel. Alworth v. Shearer*, 54 Idaho 201, 30 P.2d 199 (1934).

Since former law that provided for ratification of prior contracts, obligations, liabilities and judgments did not in any manner validate the purchase of land bank bonds, it follows that such section could not cure a defective notice to taxpayers of such purchase so as to invoke the statute of limitations so as to bar an action by the latter, attacking such purchase, more than three (3) years thereafter. *Filer Hwy. Dist. ex rel. Alworth v. Shearer*, 54 Idaho 201, 30 P.2d 199 (1934).

§ 40-1309. Corporate powers of highway districts. — Each highway district has power:

(1) To sue and be sued.

(2) To purchase and hold lands, make contracts, purchase and hold personal or real property as may be necessary or convenient for the purposes of this chapter, and to sell and exchange any real or personal property other than public lands which by the constitution and laws of the state are placed under the jurisdiction of the state land board. Personal or real property, no longer useful to the district, not exceeding ten thousand dollars (\$10,000) in value may be sold by the highway commissioners at a private sale or at any regular board meeting without advertisement. Before disposing of all other personal or real property exceeding ten thousand dollars (\$10,000) in value, the highway district commissioners shall first conduct a public hearing for which notice shall be published in accordance with the provisions of [section 40-206, Idaho Code](#), and at which hearing any person interested may appear and show cause that such personal or real property is still useful to the district and that the sale or exchange should not be made. Following testimony by all interested persons at the public hearing, the highway district commissioners may adopt a resolution finding that such personal or real property is no longer useful to the district and finding that such personal or real property should be sold or exchanged and establishing procedures for the sale of such personal or real property including, but not limited to, the date and time of the sale and whether the sale will be by live public auction, by receipt of sealed bids or by some other reasonably commercial means. The hearing and sale or exchange shall not be conducted at the same regular meeting and, except as otherwise provided by law, the only notice required for such sale or exchange shall be as set forth in [section 74-204, Idaho Code](#). Provided however, that before the district disposes of surplus real property at public sale, the district shall first notify any person who owns real property that is contiguous with the surplus real property of the district that such person has first option to purchase the surplus real property for an amount not less than the current appraised value. If more than one (1) adjoining owner wants to purchase the surplus real property, a private auction shall be held for such parties. If no

owner of adjoining property exercises his or her option to buy, the district may proceed to public sale. Highway district commissioners, highway directors, employees, and their families must be personally disinterested, directly or indirectly, in the purchase of property for the use of the highway district, or in the sale of any property belonging to the highway district, or in any contract made by the highway district or other person on behalf of the highway district unless otherwise authorized by law.

(3) To levy and apply ad valorem taxes for purposes under its exclusive jurisdiction as are authorized by law.

History.

[I.C., § 40-1309](#), as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 324, § 3, p. 1039; am. 1999, ch. 332, § 7, p. 894; am. 2000, ch. 258, § 1, p. 729; am. 2003, ch. 68, § 3, p. 227; am. 2012, ch. 306, § 1, p. 847; am. 2015, ch. 141, § 103, p. 379; am. 2019, ch. 59, § 1, p. 149.

STATUTORY NOTES

Cross References.

State land board, § 58-101 et seq.

Amendments.

The 2012 amendment, by ch. 306, in subsection (2), substituted “personal or real property” for “personal property” in the first and second sentences, deleted the mention of a resolution before a public hearing in the third sentence, and inserted sentences four and six through eight.

The 2015 amendment, by ch. 141, substituted “74-204” for “67-2343” in the fifth sentence of subsection (2).

The 2019 amendment, by ch. 59, substituted “ten thousand dollars (\$10,000)” for “five thousand dollars (\$5,000)” near the beginning of the second and third sentences in subsection (2).

CASE NOTES

[Governmental immunity.](#)

[Utility franchises.](#)

Governmental Immunity.

Because a highway district can sue and be sued, it cannot enjoy governmental immunity. *Dalton Hwy. Dist. v. Sowder*, 88 Idaho 556, 401 P.2d 813 (1965).

Utility Franchises.

The highway district legislation contained in title 40, chapter 14, and in this chapter does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 145.

§ 40-1310. Powers and duties of highway district commissioners. —

(1) The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized. Where any highway within the limits of the highway district has been designated as a state highway, then the board shall have exclusive supervision, jurisdiction and control over the designation, location, maintenance, repair and reconstruction of it. The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

(2) The highway district shall also have the right to acquire either by purchase, or other legal means, all lands and other property necessary for the construction, use, maintenance, repair and improvement of highways in their system. The highway district may change the width or location, or straighten lines of any highway in their system, and if in the constructing, laying out, widening, changing, or straightening of any highways, it shall become necessary to take private property, the district director of highways, with the consent and on order of the highway district commissioners, shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. He shall endeavor to agree with each owner of property for the purchase of a right-of-way over the lands included within the description. If the director is able to agree with the

owner of the lands, the highway district commissioners may purchase the land and pay for it out of the funds of the highway district, and the lands purchased shall then be conveyed to the highway district for the use and purpose of highways.

(3) Whenever the director of highways shall be unable to agree with any person for the purchase of land, or that person shall be unknown or a nonresident of the county in which the highway district is situated, or a minor, or an insane or incompetent person, the director shall have the right, subject to the order of the highway district commissioners, to begin action in the name of the highway district in the district court of the county in which the district is situated, to condemn the land necessary for the right-of-way for the highway, under the provisions of chapter 7, title 7, Idaho Code. An order of the highway district commissioners entered upon its minutes that the land sought to be condemned is necessary for a public highway and public use shall be prima facie evidence of the fact.

(4) The highway district has the power to contract for and pay out any special rewards and bounties as may appear expedient or useful in securing proper highway construction and maintenance, and to accept, on behalf of the district, aid or contributions in the construction or maintenance of any highway; to construct or repair, with the consent of the corporate authorities of any city within the district, any highway within a city, upon the division of the cost as may be agreed upon; or to join with the state or any body politic or political subdivision, or with any person in the construction or repair of any highway and to contract for an equitable division of the cost; and all counties, cities, highway districts and other bodies politic and political subdivisions are authorized to contract with any highway district acting through its highway district commissioners in exercise of the powers granted.

(5) The highway district has the power to receive highway petitions and lay out, alter, create and abandon and vacate public highways and public rights-of-way within their respective districts under the provisions of sections 40-202, 40-203 and 40-203A, Idaho Code. Provided however, when a public highway, public street and/or public right-of-way is part of a platted subdivision which lies within an established county/city impact area or within one (1) mile of a city if a county/city impact area has not been established, consent of the city council of the affected city, when the city

has a functioning street department with jurisdiction over the city streets, shall be necessary prior to the granting of acceptance or vacation of said public street or public right-of-way by the highway district board of commissioners.

(6) The highway district is empowered to take conveyance or other assurances, in the name of the highway district, for all property acquired by it under the provisions of this chapter for the purposes of this title. The highway district may institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities provided in this chapter. In all courts, actions, suits or proceedings, the highway district may sue, appear and defend, in person or by attorneys, and in the name of the highway district.

(7) The highway district is empowered to hold, use, acquire, sell, manage, occupy and possess property. The highway district may create highway subdistricts, which must be carefully and distinctly defined and described. Highway subdistricts may be revised or modified by the highway district commissioners, as changes in conditions demand.

(8) The highway district board of commissioners shall have the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to establish design standards, establish use standards, pass resolutions and establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way.

(9) By July 1, 2000, and every five (5) years thereafter, the highway district board of commissioners shall have published in map form and made readily available the location of all public rights-of-way under its jurisdiction. Any highway district board of commissioners may be granted an extension of time with the approval of the legislature by adoption of a concurrent resolution.

(10) In its discretion, the highway district may purchase equipment at a public auction, if the highway district board of commissioners has made a finding that such equipment may be purchased at a competitive price. Prior

to the public auction, the highway district commissioners shall, at a regular meeting of the district or at a special hearing, notice of which is published in accordance with the provisions of [section 40-206, Idaho Code](#), review any documentation available as to the items to be auctioned at the public sale and determine which items the district may bid on, and establish a maximum amount the district will bid for such item.

History.

[I.C., § 40-1310](#), as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 9, p. 803; am. 1993, ch. 412, § 8, p. 1505; am. 1994, ch. 324, § 4, p. 1039; am. 1998, ch. 184, § 3, p. 673; am. 1999, ch. 291, § 1, p. 722; am. 1999, ch. 332, § 8, p. 894; am. 2003, ch. 68, § 4, p. 227.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 291, inserted “acquire, purchase” following “construct, maintain, repair” in the first sentence of subsection (1).

The 1999 amendment, by ch. 332, in the first sentence of subsection (1), deleted “except as provided in [section 40-1323, Idaho Code](#)” following “highway district have”, inserted “and public rights-of-way” preceding “within their highway system”; in subsection (2), deleted “resident of the county in which the district is situated” following “endeavor to agree with each owner of property”; in subsection (7) substituted “subdistricts” for “divisions” in two places, substituted “revised” for “altered, changed, created”, substituted “changes in conditions demand” for “the need requires”; and in subsection (8), inserted “pass resolutions and” following “establish use standards”.

CASE NOTES

[Abandonment.](#)

[Construction with other statutes.](#)

[Litigation.](#)

Maintenance of escape ramps.

Power of court.

Scope of power.

Utility franchises.

Abandonment.

A highway district, acting through its commissioners, has the power to abandon public highways following a public hearing. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

Where there was a valid common law dedication of a road, the fact that such road had not been worked or used for a period of five years did not constitute an abandonment thereof merely by virtue of former § 40-104 (repealed by S.L. 1985, ch. 253, § 1). *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

Construction With Other Statutes.

While neither § 7-707 nor this section purport to state whether it is the order of condemnation or the complaint initiating the eminent domain action that is determinative in defining what land or what rights are sought to be condemned, § 7-707 is more specific and, thus, controlling. *Ada County Hwy. Dist. v. Sharp*, 135 Idaho 888, 26 P.3d 1225 (Ct. App. 2001).

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Litigation.

Decision to stipulate to a judgment concerning a road in a quiet title action was allegedly made by consensus but not at a public meeting, and the settlement was, in this case, a decision that required a vote for county action under § 67-2341(1), given that, under § 31-708, a county clerk was to record the vote of each member on any question upon which there was a

division, and because § 31-706 defined a quorum and subsection (6) of this section provided that any action carried out in litigation was to require a quorum; the executive session exception under § 67-2345 did not apply because (1) no vote was made in a regular meeting to authorize such a session and (2) no final action or decision could have been made in such a non-public meeting. *Farrell v. Bd. of Comm'rs*, 138 Idaho 378, 64 P.3d 304 (2002), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Maintenance of Escape Ramps.

Based upon the definition of “highways” in § 40-109(5), runaway escape ramps are, as a matter of law, part of the highway district road system, being roadside improvements, adjacent lands or interests lawfully acquired, pedestrian facilities, and any other structures, works or fixtures incidental to the preservation or improvement of the highways and under this section and § 31-805, the highway district had a duty to maintain those runaway escape ramps as part of the highway district road system. *Freeman v. Juker*, 119 Idaho 555, 808 P.2d 1300 (1991).

Where there was a disputed question of fact over whether or not escape ramps had been maintained, summary judgment should not have been granted based upon the breach of a duty to maintain them. *Freeman v. Juker*, 119 Idaho 555, 808 P.2d 1300 (1991).

Power of Court.

Although § 40-203 and this section contemplate a validation proceeding and action by the highway district, in a suit asserting tort and constitutional claims, the district court had power to determine that a road was a public highway by prescription, as defined by § 40-202(3), and evidence of long-term public use and public maintenance supported that finding. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Scope of Power.

A county highway department's exclusive jurisdiction over its highways and rights-of-way does not extend to matters that do not involve its legitimate interests, including whether a benefitting utility may require a third party to reimburse the utility for some or all of the costs of relocation

of facilities belonging to the utility within a public right-of-way. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Utility Franchises.

This section expressly sets forth the specific powers and jurisdiction vested in highway commissions, and the authority to grant utility franchises is certainly not among the powers enumerated as being vested in a highway district. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Cited *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994); *Schneider v. Howe*, 142 Idaho 767, 133 P.3d 1232 (2006).

Decisions Under Prior Law

Abandonment.

Acceptance of subdivision plats.

Allowance or rejection of claims.

Bonds and tax levy.

Constitutionality.

Elements of negligence.

Eminent domain.

Immune from taxation.

Liability of officers.

Maintenance of highways.

Necessity for improvement.

Notice to taxpayer.

Personal interest of commissioners.

Powers of commissioners.

Right of property owners.

Abandonment.

The power to abandon a road under law that provided for the powers and duties of highway commissioners was in the commissioners and not in the public as where a road is not worked or used for a period of five years. [Mosman v. Mathison](#), 90 Idaho 76, 408 P.2d 450 (1965).

If a bridge was no longer necessary, a finding to that effect must have been made by the commissioners before it could be abandoned. [Nicolaus v. Bodine](#), 92 Idaho 639, 448 P.2d 645 (1968).

Acceptance of Subdivision Plats.

While former law regarding general powers and duties of highway commissioners appeared to grant highway districts exclusive jurisdiction over highways within their districts, it did not give them the power or duty to accept subdivision plats; under the law as it existed when subdivision was created (1973), county clearly had the authority to accept and approve the plat and the direct effect of that acceptance was to dedicate the thoroughfare to the public use. [Harshbarger v. County of Jerome](#), 107 Idaho 805, 693 P.2d 451 (1984).

Allowance or Rejection of Claims.

Board of commissioners was only body authorized to allow claims against district. [Walton v. Channel](#), 34 Idaho 532, 204 P. 661 (1921).

Claims must have been considered and allowed or rejected at meeting of board duly had. [Walton v. Channel](#), 34 Idaho 532, 204 P. 661 (1921).

Failure to consider, approve, or reject claims before they are paid was neglect of official duty for which officers may be removed. [Walton v. Channel](#), 34 Idaho 532, 204 P. 661 (1921).

Action of board in considering, allowing, or rejecting claim after it has been paid was nullity. [Walton v. Channel](#), 34 Idaho 532, 204 P. 661 (1921).

Bonds and Tax Levy.

Board of county commissioners had the power to issue county bonds for bridges built in county outside of highway district and to levy taxes on the entire county for payment of such bonds, provided it was determined that that portion of county included in highway district was benefited by the building of such bridges. [Reinhart v. Canyon County](#), 22 Idaho 348, 125 P.

791 (1912); Nampa Hwy. Dist. v. Canyon County, 30 Idaho 446, 165 P. 1126 (1917).

Constitutionality.

Former highway district law did not deprive owner of his property without due process of law or deny equal protection of law, either in the organization of a district or in the issuance of road and bridge bonds. *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927).

Elements of Negligence.

Negligence on part of highway district in regard to excavations in highway was failure to perform act that reasonably prudent man would, under like circumstances, perform. *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

Eminent Domain.

Under the provisions of former law that provided for general powers and duties of the board of highway commissioners, highway district was entitled to intervene and be heard on questions of necessity and public good in condemnation proceedings. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Immune from Taxation.

Highway district was separate taxing unit within Idaho Const., Art. VII, § 6, prohibiting legislature from imposing taxes for it, either directly or indirectly through county in which it was situated. *Idaho County v. Fenn Hwy. Dist.*, 43 Idaho 233, 253 P. 377 (1926).

Liability of Officers.

Highway officers were generally liable for injuries resulting from malfeasance or nonfeasance in performance of ministerial duties. *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

Highway commissioner was not liable for injuries on highway in absence of evidence of failure to exercise due care in selection of director of work or actual knowledge of negligence in its performance. *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

Maintenance of Highways.

Once thoroughfare was dedicated to the public it became a highway, and while, under former law regarding improvement of highways, it appeared that county must assume its maintenance since in counties with highway districts former laws regarding improvement of highways transferred the powers and duties over highways from the county commissioners to the highway board of the highway district, highway district had the duty to accept thoroughfare into its highway system and to begin providing maintenance; however, the decision to maintain it as a gravel road or to bring it up to the district's minimum standards of highway construction rested within the discretion of the highway district. *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

Necessity for Improvement.

Right to determine necessity for highway improvement for which land was sought by eminent domain proceedings was with highway district. *Grangeville Hwy. Dist. v. Ailshie*, 49 Idaho 603, 290 P. 717 (1930).

Highway commissioners must have repaired bridges found to be unsafe upon the request of two (2) or more taxpayers. *Nicolaus v. Bodine*, 92 Idaho 639, 448 P.2d 645 (1968).

Notice to Taxpayer.

Action of highway district commissioners ratifying the purchase, by its secretary, of land bank bonds, with sinking funds and entering the same on the minutes of proceedings of the board, but which minutes were not published, did not constitute notice to a taxpayer operating to bar his action to recover funds from the members of the board of highway commissioners more than three (3) years after such ratification. *Filer Hwy. Dist. ex rel. Alworth v. Shearer*, 54 Idaho 201, 30 P.2d 199 (1934).

Personal Interest of Commissioners.

As the commissioners were required to be elected from their subdistricts by the electors, of necessity each time that any maintenance work or construction work was done by their order, each of the commissioners would have been affected thereby by improvement of the highways or roads within the district and by the requirement of payment of taxes and, therefore, were not disqualified by personal interest from sitting on or

voting on proceedings to abandon a road. *Mosman v. Mathison*, 90 Idaho 76, 408 P.2d 450 (1965).

Powers of Commissioners.

Highway district was not a political municipality created for governmental purposes, but its powers were specially limited to construction of highways for benefit of people and property therein, and its powers to tax were not unlimited. *Oregon Short Line R.R. v. Kimama Hwy. Dist.*, 287 F. 734 (D. Idaho 1923), *aff'd*, 298 F. 431 (9th Cir. 1924); *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912); *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456 (1926).

County commissioners, having no jurisdiction over construction of highways within organized districts, could not expend proceeds of county bond issue in territory embraced in highway district. *Baker v. Gooding County*, 25 Idaho 506, 138 P. 342 (1914).

In the area of construction, maintenance, and day-to-day operation of highways, the prerogative of the highway commissioners was exclusive. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Right of Property Owners.

Under former law that provided for the powers and duties of highway commissioners where property owners abutting the block in which the approach to a subway under a railroad track was to be constructed were not parties to a contract for the construction of a subway, they had no right in it; neither were they entitled to compensation because of such construction, and they were not in a position to question the validity of a retroactive act of the legislature authorizing the execution of such contract, although the particular contract, prior thereto, had been adjudicated invalid in an action between the same parties. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1936).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 155 et seq.

§ 40-1311. Jurisdiction of highway district commissioners. — In respect to all highways included within a highway district highway system, the power and jurisdiction of the highway district shall be inclusive. The highway district commissioners shall keep the highways in their system in proper repair, within the limits of the funds available to the highway district.

History.

I.C., § 40-1311, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 328, § 10, p. 803; am. 1999, ch. 332, § 9, p. 894.

CASE NOTES

Decisions Under Prior Law

Condemnation actions.

Jurisdiction of commissioners.

Limitation of tax levy.

Condemnation Actions.

Under former law regarding jurisdiction of highway commissioners and cognate legislation respecting highway districts, such district may have intervened in an action seeking to condemn land in the district by the state for highway purposes. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Jurisdiction of Commissioners.

Under the provisions of former law regarding jurisdiction of highway commissioners and former law that provided for general powers and duties of commissioners, the highway commissioners were vested with exclusive general supervision and jurisdiction over all highways within their districts, except as provided by former law regarding powers and duties of city council in cities, towns or villages located in the district and the county commissioners were precluded from entering into such districts for the

purpose of building or repairing roads or bridges. [Baker v. Gooding County](#), 25 Idaho 506, 138 P. 342 (1914).

Limitation of Tax Levy.

Board of county commissioners may have issued county bonds for bridges built in county outside of highway district and levied taxes on entire county for payment of such bonds, provided highway district was benefited by the building of such bridges. [Reinhart v. Canyon County](#), 22 Idaho 348, 125 P. 791 (1912).

§ 40-1312. Grant of powers to be liberally construed. — The grant of powers provided in this chapter to highway districts and to their officers and agents, shall be liberally construed, as a broad and general grant of powers, to the end that the control and administration of the districts may be efficient. The enumeration of certain powers that would be implied without enumeration shall not be construed as a denial or exclusion of other implied powers necessary for the free and efficient exercise of powers expressly granted.

History.

I.C., § 40-1312, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Scope of Power.

A county highway department's exclusive jurisdiction over its highways and rights-of-way does not extend to matters that do not involve its legitimate interests, including whether a benefitting utility may require a third party to reimburse the utility for some or all of the costs of relocation of facilities belonging to the utility within a public right-of-way. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Decisions Under Prior Law

In general.

Intervention in condemnation action.

Reports.

Review.

In General.

In the area of construction, maintenance, and day-to-day operation of highways, the prerogative of the highway commissioners was exclusive. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Intervention in Condemnation Action.

Under former law that provided that powers granted to highway districts should be liberally construed and cognate legislation respecting highway districts, such district might have intervened in an action seeking to condemn land in the district by the state for highway purposes. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Reports.

Under the provisions of former law that provided that powers granted to highway districts be liberally construed, the board of commissioners was acting within the scope of its powers in directing its secretary to make reports in conformity with former laws regarding general powers of commissioners and requirement of annual report and financial statement, and in subsequently ratifying such reports which then became reports of the board not subject to attack. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1922).

Review.

The exercise of administrative discretion could not be totally free of proscription and former law regarding powers of highway commissioners recognized this principle by providing for judicial review of a decision to abandon a highway or bridge. *Nicolaus v. Bodine*, 92 Idaho 639, 448 P.2d 645 (1968).

§ 40-1313. District has legal title to property. — The legal title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in the highway district, and shall be held by the district in trust for, and is dedicated and set apart to the uses and purposes set forth in this chapter.

History.

I.C., § 40-1313, as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 190 et seq.

C.J.S. — 39A C.J.S., Highways, § 135 et seq.

§ 40-1314. Compensation of highway district commissioners, officers, agents and employees. — (1) It shall be the duty of the board of highway district commissioners of each highway district to fix the annual salaries of the highway district commissioners commencing on October 1 and for the next ensuing year. The proposed commissioner salaries shall be published as a separate line item in the highway district's annual budget.

(2) Actual expenses shall be paid in addition to their compensation. The payment for expenses shall be paid from the funds of the highway district upon the presentation of itemized vouchers, signed by the commissioners and under oath made to the secretary of the district.

(3) When a commissioner is an officer and/or agent of the district, the two (2) remaining commissioners may fix the salary and benefits to be paid him for his services as an officer and/or agent. A commissioner acting as an officer and/or agent of the district shall be entitled to his necessary and actual expenses in addition to his salary, but shall not be entitled to draw compensation as a commissioner when placed upon a salary. The board shall fix the salary and benefits to be paid to the other officers and agents and employees of the highway district, to be paid out of the treasury of the highway district.

(4) Commissioners are considered employees of the district. The district shall be liable and responsible for the actions of the commissioners, officers, agents and/or employees of the district when the commissioners, officers, agents and/or employees are performing their duties on behalf of the district.

History.

I.C., § 40-1314, as added by 1985, ch. 253, § 2, p. 586; am. 1990, ch. 296, § 1, p. 818; am. 1993, ch. 109, § 2, p. 278; am. 1997, ch. 378, § 1, p. 1208; am. 2001, ch. 44, § 1, p. 82; am. 2002, ch. 133, § 1, p. 364; am. 2003, ch. 68, § 5, p. 227.

CASE NOTES

Decisions Under Prior Law

Automobile expense.

Office rent and notarial services.

Railroad fare.

Recovery of void allowance.

Automobile Expense.

The reasonable value for use of an automobile was not an actual and necessary expense within the meaning of former law that provided for compensation and expenses of highway commissioners. *Sanborn v. Pentland*, 35 Idaho 639, 208 P. 401 (1922).

Claim for gasoline and oil used while transacting business for district was properly allowed even though the claim recited on its face that it was for "auto hire." *Choate v. North Fork Hwy. Dist.*, 39 Idaho 483, 228 P. 885 (1924).

Office Rent and Notarial Services.

Commissioner was not entitled to claim compensation for office rent or services as notary, and a contract made with a commissioner relative to such items was void. *Sanborn v. Pentland*, 35 Idaho 639, 208 P. 401 (1922).

Railroad Fare.

Commissioner could not journey to another state on personal affairs and charge district with railroad fare in returning to attend meeting of board. *Choate v. North Fork Hwy. Dist.*, 39 Idaho 483, 228 P. 885 (1924).

Recovery of Void Allowance.

Where commissioner had received compensation for matters not allowed by law, amount could have been recovered in action by taxpayer, where proper authorities refused to act. *Sanborn v. Pentland*, 35 Idaho 639, 208 P. 401 (1922).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 170.

§ 40-1315. Cost of highways — Equitable division among benefited districts. — (1) In the laying out, alteration, construction, maintenance, repair or improvement of any highway or portion of it, within a county and not included within a highway district in a county which would also be for the benefit of the highway district, or included within a highway district which would also be for the benefit of a portion of the county or other highway districts not included in the highway district, and the cost would, if borne wholly by the highway district or the excluded portion, be an unjust or unreasonable burden, the highway district commissioners and the county commissioners shall have power to contract with each other for a division and apportionment of the cost of the work.

(2) In case they fail to agree, an action may be maintained in the district court between a highway district and the county, and the district court shall render a judgment as shall be just and equitable in respect to the division and apportionment of cost. All proceedings in the action shall be the same as in ordinary civil actions, with the same right of appeal and other rights and remedies as in an ordinary civil action by or against a body politic or political subdivision.

(3) Where a highway traverses two (2) or more highway districts, and the cost or burden would be inequitably distributed if each district assumed the cost of laying out, alteration, construction, improvement, maintenance or repair of that portion of the highway lying wholly within the district, the highway commissioners of the district affected have power to contract with each other for the division and apportionment of the cost of the work. If the highway also traverses portions of the county not included within any highway district, or if in the opinion of the commissioners the highway is of benefit to the county at large, a portion of the cost shall be borne by the county, and the commissioners and the respective highway district commissioners have power to contract with each other for the work.

History.

I.C., § 40-1315, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law

Apportionment of costs.

Apportionment of funds.

Legislative intent.

Tax levy.

Apportionment of Costs.

Where improvements were made for the benefit of highway district and territory of county not included within such district, and it would have been unjust for the excluded territory to assume the whole burden of the cost of the improvement, the district and board of county commissioners were given the power to contract each with the other for a division of the costs. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

The provisions of former law regarding costs of highways and an equitable division among benefited districts of such costs and the relief afforded thereunder did not apply where the improvements made by a county were wholly beyond the boundaries of the highway district, and it was not claimed, in the action seeking contribution, that the costs were an unjust burden on the county. *Nampa Hwy. Dist. v. Canyon County*, 30 Idaho 446, 165 P. 1126 (1917).

Former law regarding cost of highways and an equitable division among districts of such cost was intended for the relief of the portion of a county not organized into a highway district by providing that highway district may be required to assume a part of costs for improvements extending outside boundaries of district. *Nampa Hwy. Dist. v. Canyon County*, 30 Idaho 446, 165 P. 1126 (1917).

Apportionment of Funds.

Former law regarding the costs of highways and the equitable division of such costs among benefited districts did not contemplate the raising of funds for purpose of constructing and repairing highways within highway districts by voting bonds upon the entire county, and then leaving it to the board of county commissioners to apportion the proceeds among the several districts. *Baker v. Gooding County*, 25 Idaho 506, 138 P. 342 (1914).

Legislative Intent.

In enacting former law regarding cost of highways and the equitable division of such costs among benefited districts, the legislature intended that, where improvements were made in territory for the benefit of county as well as highway district, then, in that event, the county should assume that portion of the cost commensurate with the benefits derived from such improvement. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

Tax Levy.

Board of county commissioners may levy and collect taxes against all the taxable property within county, including that within highway district, for payment of bonds, proceeds of which have been used for construction of bridges within county but outside of district. *Nampa Hwy. Dist. v. Canyon County*, 30 Idaho 446, 165 P. 1126 (1917).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 130 et seq.

C.J.S. — 40 C.J.S., Highways, § 365 et seq.

§ 40-1316. Annual report of highway district. — (1) On or before the first day of January in each year, the highway district shall make a report of the condition of the work, construction, maintenance and repair of all the highways within the district on the first day of October, accompanied by a map of the highways, together with other facts necessary for setting forth generally the situation and condition of the highways within the district.

(2) Reports shall be made in triplicate. One (1) report shall be filed in the office of the highway district, one (1) in the office of the board, and one (1) with the clerk of the commissioners.

History.

I.C., § 40-1316, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law

Effect of reports.

Mandatory compliance.

Effect of Reports.

That maps attached to the annual report of the commissioners to the state board of highway directors (transportation board) and the county commissioners failed to show a road after its alleged abandonment was corroborative of the record showing such abandonment. *Mosman v. Mathison*, 90 Idaho 76, 408 P.2d 450 (1965).

Mandatory Compliance.

Preparation, filing, and publication of reports was mandatory. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

§ 40-1317. Annual financial statement of district — Audit. — (1) On or before the first day of January of each year, the highway district shall make and file in its office a full, true and correct statement of the financial condition of the highway district on the first day of October of the preceding year, giving a statement of the liabilities and assets of the highway district on the first day of October of the preceding year, and a copy of the statement shall be published in at least one (1) issue of some newspaper published in the county.

(2) All highway districts shall have an annual audit made of the financial affairs of the district as required in [section 67-450B, Idaho Code](#), by the first day of January following the close of the preceding fiscal year.

History.

[I.C., § 40-1317](#), as added by 1985, ch. 253, § 2, p. 586; am. 1987, ch. 131, § 1, p. 262; am. 1993, ch. 387, § 10, p. 1417; am. 2007, ch. 287, § 1, p. 816.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 287, in subsection (1), substituted “January” for “November,” and twice inserted “of the preceding year”; and in subsection (2), substituted “January” for “December,” and inserted “preceding.”

CASE NOTES

Decisions Under Prior Law [Limitation of action by taxpayer.](#)

[Sufficiency of compliance.](#)

[Limitation of Action by Taxpayer.](#)

Under former law that required an annual financial statement of the district and other legislation relating to the subject, an action by commissioners of a highway district attempting to ratify the expenditure of

funds by the secretary of the district in the purchase of land bank bonds, and an entry of such action on the minutes, which were not published, fell short of constituting notice to a taxpayer so as to bar his right of action to recover funds from the members of the board, more than three (3) years thereafter. *Filer Hwy. Dist. ex rel. Alworth v. Shearer*, 54 Idaho 201, 30 P.2d 199 (1934).

Sufficiency of Compliance.

Where reports did not altogether conform to law and were not published until after statutory date, it was not considered sufficient ground for removal from office. *Walton v. Channel*, 34 Idaho 532, 204 P. 661 (1921).

§ 40-1318. Inspection of records by commissioners. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1318, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1999, ch. 332, § 10, p. 894, effective July 1, 1999.

§ 40-1319. Director of highways — Appointment — Qualifications — Oath. — As soon as possible after the organization of a highway district, the highway district commissioners may appoint a director of highways. If a director of highways is not appointed his duties shall devolve upon the highway district commissioners. The director shall be skilled and experienced in the building, maintenance and repairing of highways and bridges. The term of office of the director, and his compensation, shall be fixed by the highway district commissioners.

History.

I.C., § 40-1319, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 11, p. 894.

CASE NOTES

Decisions Under Prior Law Right to Salary and Expenses.

Where there was no evidence that director failed to qualify under provisions of former law that provided appointment of director of highways, but it was in evidence that he acted for and was received by board in his official capacity, he would have been entitled to his salary and expenses legitimately incurred. *Choate v. North Fork Hwy. Dist.*, 39 Idaho 483, 228 P. 885 (1924).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 166.

§ 40-1320. Directors of highways — Deputy directors — Appointment — Duties. — The director may appoint, subject to confirmation and approval of the highway commissioners, one (1) deputy director for each subdistrict and as many additional deputy directors as the highway commissioners may determine to be advisable. It is the duty of the director of highways to give to any deputy directors specific instructions as to the highway work to be done, and shall ascertain if highway contractors in the district are complying or have complied with their contracts. The director shall require any deputy directors to keep and maintain all the highways in their charge in good repair, and shall, subject to the highway commissioners and as provided by law, exercise full and complete control over all highways and deputy directors of the district. The director shall submit reports to the highway district whenever required by the highway commissioners.

History.

I.C., § 40-1320, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 12, p. 894.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 301 et seq.

C.J.S. — 39A C.J.S., Highways, § 173.

§ 40-1321. Deputy directors — Appointment — Duties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1321, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1999, ch. 332, § 13, p. 894, effective July 1, 1999.

§ 40-1322. Creation of local improvement districts. — Highway districts are empowered to create local improvement districts for construction, reconstruction and maintenance of highways and accompanying curbs, gutters, culverts, sidewalks, paved medians, bulkheads and retaining walls within the boundaries of the highway districts. The organization and operation of local improvement districts shall be as nearly as practicable as prescribed in chapter 17, title 50, Idaho Code.

History.

I.C., § 40-1322, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1323. Cities included in highway districts — Powers and duties of city council. — (1) If any highway district shall include within its boundaries any incorporated city, or any portion of a city, the power of taxation on the part of the highway district as to ad valorem taxes, and in general all power of taxation or assessment, shall extend to and include the persons and property within the territory of the included city. The residents of the included territory shall be deemed for all purposes residents of the highway district, and entitled to vote at highway district elections to the same extent as other residents of the highway district. Nothing in this title shall be construed as affecting or impairing any power of taxation or assessment for local city highway purposes on the part of the authorities of the city of any included territory. Each incorporated city, or portion of it, within a highway district, shall constitute a separate division of the district. The city council of each incorporated city within the territory of a highway district, so far as relates to their city, shall have the powers and duties as provided by this chapter and as provided in chapter 3, title 50, Idaho Code, in such case.

(2) All the provisions of this title as to voting, taxation, assessments and bonding on the part of the highway district shall apply without change or discrimination to the persons and taxable property within the included territorial limits of a city.

History.

I.C., § 40-1323, as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 14, p. 894.

CASE NOTES

Functioning street department.

Legislative intent.

Functioning Street Department.

Where the district court specifically found the city did not have a functioning street department, the highway district had exclusive general

supervisory authority to maintain the streets within the highway district. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

Legislative Intent.

Since § 50-1330 was added to the Idaho Code in 1983, and this section was added in 1985, the legislature must have intended to preserve the incorporated city's ability to levy taxes and intended to preserve the city's ability to maintain streets within its city limits and to allow a city to exercise this authority only if it has a functioning street department. To interpret it otherwise would effectively make the provisions of § 50-1330 regarding incorporated cities with functioning street departments a nullity. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

Decisions Under Prior Law

Control of streets and highways.

Liability for defective streets.

Liability of public officials for injuries.

Control of Streets and Highways.

City council or village trustees had exclusive control of streets and highways within corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Liability for Defective Streets.

Cities and villages incorporated under the general laws of the state were liable for negligent discharge of the duty imposed on them of keeping streets in a reasonably safe condition for travelers. *Moreton v. St. Anthony*, 9 Idaho 532, 75 P. 262 (1904).

Liability of Public Officials for Injuries.

Mayor of city of second class was not individually liable for maintenance of street in a reasonably safe condition and cannot be sued individually for damages for injuries sustained as the result of alleged failure of city to maintain warning sign of a dead end street. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

Complaint for personal injuries arising out of dead end street accident which alleges that injuries were proximately caused by the failure of the councilmen to maintain warning signs stated a cause of action against the councilmen. [Lemmon v. Clayton, 128 F. Supp. 771 \(D. Idaho 1955\)](#).

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 106 et seq.

C.J.S. — 39A C.J.S., Highways, § 148.

§ 40-1324. Jurisdiction over included territory. — When a highway district is organized under the provisions of this chapter, it shall, except as otherwise provided, supersede all other highway districts or parts of districts within the limits of the highway district, and upon the organization the existing position of director of highways shall be abolished. After the organization of a highway district the highway commissioners have the exclusive power to levy and apply all bridge and highway taxes within the district. Where prior to the organization of a highway district bonds shall have been lawfully issued by the county including within its territory property afterward included within the highway district, the proper corporate authorities of the county shall continue to levy, collect and apply the taxes necessary to discharge the obligation of those bonds. Nothing in this chapter shall be construed as affecting any power of any incorporated city, or portion of it, lying within the limits of a highway district, to issue bonds as empowered by law and to levy, collect or apply the necessary taxes for them.

History.

I.C., § 40-1324, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1325. Adoption of budget — Public hearing. — Highway district commissioners shall, prior to certifying a property tax levy to the commissioners and a county assessor, as provided in subsections (1) and (3) of [section 63-803, Idaho Code](#), adopt a budget and cause a public hearing to be held upon the budget.

History.

[I.C., § 40-1325](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 99, § 1, p. 309.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 99, substituted “certifying a property tax levy” for “certifying an ad valorem tax levy” and inserted “as provided in subsections (1) and (3) of [section 63-803, Idaho Code](#), adopt a budget and cause a public hearing to be held upon the budget.”

§ 40-1326. Notice of budget hearing. — Notice of the budget hearing meeting shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place in each highway district and a copy of the notice shall also be published in accordance with the provisions of [section 40-206, Idaho Code](#). The place, hour and day of the hearing shall be specified in the notice, as well as the place where the budget may be examined prior to the hearing. A full and complete copy of the proposed budget shall be published with and as a part of the publication of the notice of hearing.

History.

[I.C., § 40-1326](#), as added by 1985, ch. 253, § 2, p. 586.

§ 40-1327. Public inspection of budget. — The budget shall be available for public inspection from and after the date of the posting of notice of hearing at a place and during business hours as the highway commissioners may direct.

History.

I.C., § 40-1327, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1328. Quorum of highway commissioners at budget hearing — Objections. — A quorum of the highway commissioners shall attend the hearing and explain the proposed budget and hear any and all objections to it.

History.

I.C., § 40-1328, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1329. Completion and finalization of budget. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1329, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 2009, ch. 99, § 2.

§ 40-1330. Fiscal year. — The fiscal year of the highway district shall commence on the first day of October of each year.

History.

I.C., § 40-1330, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1331, 40-1332. [Reserved.]

§ 40-1333. Cities — Highway responsibility. — Cities, with city highway systems, shall be responsible for the construction, reconstruction and maintenance of highways in their respective city systems, except as provided in [section 40-607, Idaho Code](#). Cities may make agreements with a county, highway district or the state for their highway work, or a portion of it, but they shall compensate the county, district or state fairly for any work performed.

History.

[I.C., § 40-1333](#), as added by 1985, ch. 253, § 2, p. 586; am. 1999, ch. 332, § 15, p. 894.

CASE NOTES

Jurisdiction Over Streets.

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. [City of Sandpoint v. Sandpoint Indep. Highway Dist.](#), 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1334. Every city a highway district — Powers and duties of city council. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1334, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1999, ch. 332, § 16, p. 894, effective July 1, 1999.

§ 40-1335. Standards for curb construction — Curb ramps for people with physical disabilities. — (1) The standard for construction of curbs on each side of any city highway, or any connecting highway for which curbs and sidewalks have been prescribed by the appropriate governing body, shall require curb cuts or ramps at locations which allow a crossing movement at intersections. Each curb cut or ramp shall be constructed to allow reasonable access to the crosswalk for people with physical disabilities.

(2) Standards set for curb cuts and ramps under this section shall apply to all new curb construction and to all replacement curbs constructed at any point in a block which gives reasonable access to a crosswalk.

History.

I.C., § 40-1335, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 235, § 31, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in the section heading substituted “for people with physical disabilities” for “for the physically handicapped”; and in the last sentence in subsection (1), substituted “crosswalk for people with physical disabilities” for “crosswalk for physically handicapped persons.”

§ 40-1336. Record books to be kept. — The highway district board of commissioners must cause to be kept permanently and indefinitely:

(1) A minute book, in which must be recorded all orders and decisions made by them, and the proceedings at all regular and special meetings.

(2) An allowance book or disbursement journal, in which must be recorded all orders for the payment of money from the highway district treasury, to whom made, and on what account, dating, numbering and indexing the same through each year.

(3) A road book, containing all proceedings and adjudications relating to the validation and abandonment and/or realignment of highways, public streets and public rights-of-way within the highway district highway system.

(4) An ordinance book, containing all ordinances, stating the date enacted.

(5) A resolution book, containing all resolutions, stating the date adopted.

History.

I.C., § 40-1336, as added by 1994, ch. 324, § 5, p. 1039.

§ 40-1337. Classification and retention of records. — (1) Highway district records shall be classified as follows:

(a) “Permanent records” shall consist of, but not be limited to, the following: proceedings of the governing body, ordinances, resolutions, bond register, warrant register, budget records, general ledger, cash books, right-of-way use permits and records affecting the title to real property or liens thereon, and other documents or records as may be deemed of permanent nature by the highway district board of commissioners.

(b) “Semipermanent records” shall consist of, but not be limited to, the following: claims, contracts, cancelled checks, warrants, duplicate warrants, purchase orders, vouchers, duplicate receipts, bonds and coupons, registration and other election records, financial records and other documents or records as may be deemed of semipermanent nature by the board of highway district commissioners.

(c) “Temporary records” shall consist of, but not be limited to, the following: correspondence not related to subsections (1) and (2) of this section, cash receipts subject to audit, and other records as may be deemed temporary by the board of highway district commissioners.

(d) Those records not included in subsection (1)(a), (1)(b) or (1)(c) of this section may be classified as permanent, semipermanent or temporary by the board of highway district commissioners.

(2) Highway district records shall be retained as follows:

(a) Permanent records shall be retained for not less than ten (10) years.

(b) Semipermanent records shall be kept for not less than five (5) years after date of issuance or completion of the matter contained within the record.

(c) Temporary records shall be retained for not less than two (2) years.

History.

I.C., § 40-1337, as added by 1994, ch. 324, § 6, p. 1039.

§ 40-1337A. Photographic or digital storage and use of highway district records. — (1) A highway district official may reproduce and retain documents in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the document in paper form during the period for which the document must be retained and shall preclude unauthorized alteration of the document.

(a) If the medium chosen for retention is photographic, all film used must meet the quality standards of the American national standards institute (ANSI).

(b) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

(c) A document retained by the highway district in any form or medium permitted under this section shall be deemed an original public record for all purposes. A reproduction or copy of such a document, certified by the highway district official, shall be deemed to be a transcript or certified copy of the original and shall be admissible before any court or administrative hearing.

(d) Once a paper document is retained in a nonpaper medium as authorized by this section, the original paper document may be disposed of or returned to the sender.

(e) Whenever any record is reproduced by photographic or digital process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fire-resistant vault, or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record.

(2) A highway district may incorporate an electronic version of another agreement by reference into a contract, if: (a) The unsigned terms are stored in accordance with the provisions of this section; (b) The signed contract contains a prominently displayed notification of the incorporation by

reference; and (c) The unsigned terms are readily available for inspection by the parties.

History.

I.C., § 40-1337A, as added by 2015, ch. 117, § 1, p. 303.

STATUTORY NOTES

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Chapter 14

SINGLE COUNTYWIDE HIGHWAY DISTRICTS

Sec.

40-1401. Election to establish district.

40-1402. Applicability of general election laws — Notice of election — Polling places — Canvassing vote — Payment of cost. [Repealed.]

40-1403. Rejection of plan — Intervals for new elections.

40-1404. Appointment of first highway district commissioners in certain countywide highway districts — Subdistricts — Elections, terms and salaries of commissioners.

40-1404A. Elections, terms and salaries of commissioners in certain countywide highway districts.

40-1404B. Vacancies — Filling a mid-term vacancy.

40-1405. Organization of district — Officers — Official bonds.

40-1406. Powers and duties of highway commissioners — One highway district in county — Highway powers of cities in county abolished — Laws in conflict superseded.

40-1406A. Summarization of ordinances permitted — Requirements.

40-1407. Dissolution of existing districts or systems — Transfer of funds.

40-1408. Expense of notices and dissolution proceedings.

40-1409. Expenses of election.

40-1410. Existing systems and districts — Transfer — Liability.

40-1411. Apportionment of funds to pay debts of dissolved districts.

40-1412. Control of bridges and highways in dissolved systems and districts — Sidewalks — Special assessments.

40-1413. Balance of funds of dissolved system or district — Disposition — No funds to city.

40-1414. Creation of local improvement districts.

40-1415. Responsibilities of single countywide highway districts within cities — Final decision on urban renewal projects — Settlement of questions.

40-1416. Authorization for voters to approve vehicle registration fee.

40-1417. Application of campaign reporting law to countywide highway district elections. [Repealed.]

40-1418. Proceedings for dissolution of existing single countywide highway district.

§ 40-1401. Election to establish district. — Any county may, at the discretion of the commissioners, or shall, upon a request in writing from ten percent (10%) or more of the qualified electors residing in each of the county commissioner subdistricts, hold an election at which the following question shall be submitted to the electorate: “Shall this county be served by one county-wide highway district for all city highways and county secondary highways?”. The election for this question shall be held at the next general election following a decision by the board of county commissioners for such an election or upon receipt of the qualified voters written requests to hold such election. At least one (1) public hearing shall be held by the board of county commissioners, prior to the election.

History.

I.C., § 40-1401, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 1, p. 419.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 14 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1401 to 40-1403. 1867, p. 64, §§ 1 to 3; R.S., §§ 1120-1122; reen. R.C. & C.L., §§ 1041 to 1043; C.S., §§ 1469 to 1471; I.C.A., §§ 39-1301 to 39-1303.

40-1404. 1867, p. 64, § 4; R.S., § 1123; reen. R.C. & C.L., § 1044; C.S., § 1472; I.C.A., § 39-1304.

40-1405. 1864, p. 440, § 10; am. R.S., § 1128; reen. R.C. & C.L., § 1045; C.S., § 1473; I.C.A., § 39-1305.

40-1406. 1864, p. 440, § 13; R.S., § 1129; reen. R.C. & C.L., § 1046; C.S., § 1474; I.C.A., § 39-1306.

40-1407. 1866, p. 179, § 2; R.S., § 1130; reen. R.C. & C.L., § 1047; C.S., § 1475; I.C.A., § 39-1307.

40-1408. 1866, p. 181, § 1; am. R.S., § 1131; reen. R.C. & C.L., § 1048; C.S., § 1476; I.C.A., § 39-1308.

Idaho Code § 40-1402

§ 40-1402. Applicability of general election laws — Notice of election — Polling places — Canvassing vote — Payment of cost. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 77, effective January 1, 2011.

History.

I.C., § 40-1402, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

A former § 40-1402 was repealed. See Prior Laws, § 40-1401.

§ 40-1403. Rejection of plan — Intervals for new elections. — In any county where the question fails of adoption, another election may be called and held by the submission of petitions, but any subsequent election shall be held not oftener than two (2) years after the holding of any election submitting the question to the vote of the electorate.

History.

I.C., § 40-1403, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1403 was repealed. See Prior Laws, § 40-1401.

§ 40-1404. Appointment of first highway district commissioners in certain countywide highway districts — Subdistricts — Elections, terms and salaries of commissioners. — For counties with a population of two hundred thousand (200,000) persons or less, if there is a majority affirmative vote at the election the county commissioners, at their next meeting shall organize the countywide highway district. The county shall be subdivided by the county commissioners into three (3) subdistricts, designated subdistricts number one, two and three, as nearly equal in population as practicable, and one (1) highway commissioner shall represent each subdistrict and be a resident of the subdistrict. The governor shall appoint the first countywide highway district commissioners. Where one (1) or more highway districts have been in existence at the time of the creation of the countywide highway district, the governor shall appoint, whenever practicable, at least one (1) of the former highway district commissioners as they shall qualify by reason of residence in the territorial limits of the subdistricts of the countywide highway district as a commissioner of the countywide highway district. County commissioners and city council members shall not be eligible to hold office as a countywide highway district commissioner. The originally appointed commissioners shall serve until the next general election when two (2) members shall be elected for two (2) years and one (1) member shall be elected for a term of four (4) years, the commissioner from subdistrict number one being elected for a term of four (4) years. The four (4) year term shall be allotted thereafter in rotation to subdistricts number two, three and one. A qualified voter of the countywide highway district shall be eligible to vote for each of the countywide highway district commissioners, and the election shall be conducted as provided by Idaho statutes relating to holding elections at the county level.

The highway commissioners shall take office on January 1 of the year immediately following their election, and each may be compensated in accordance with the provisions of [section 40-1314, Idaho Code](#), or receive a salary not to exceed six hundred dollars (\$600) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed seven hundred dollars (\$700) per calendar month.

History.

I.C., § 40-1404, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 2, p. 419; am. 1993, ch. 109, § 1, p. 278; am. 1998, ch. 300, § 1, p. 989; am. 2003, ch. 68, § 6, p. 227.

STATUTORY NOTES**Prior Laws.**

Former § 40-1404 was repealed. See Prior Laws, § 40-1401.

Effective Dates.

Section 5 of S.L. 1998, ch. 300 declared an emergency. Approved March 24, 1998.

§ 40-1404A. Elections, terms and salaries of commissioners in certain countywide highway districts. — In countywide highway districts located in a county with a population of more than two hundred thousand (200,000) persons in which the voters have chosen to establish a countywide highway district at a previous election, the county shall be divided by the county commissioners immediately upon the effective date of this act into five (5) subdistricts which shall be as nearly equal in population as practicable. No precincts shall be divided. A highway district commissioner shall be a resident of the subdistrict which he represents. Voters in each subdistrict shall vote only for one (1) candidate seeking to represent that subdistrict. County commissioners, mayors and city council members shall not be eligible to hold office as a countywide highway district commissioner. At the election held in 1998, commissioners representing subdistricts two and five shall be elected for two (2) year terms and commissioners representing subdistricts three and four shall be elected for four (4) year terms. Thereafter, all commissioners shall be elected for four (4) year terms. Any incumbent in office on the effective date of this act may complete the term to which they were elected and shall represent the subdistrict in which they reside. Any incumbent in office on the effective date of this act whose term expires on January 1, 2000, shall retain that office until January 1, 2000, shall be assigned the subdistrict in which they reside by the county commissioners, which subdistrict shall be numbered one as provided in this section and that commissioner need not stand for election in 1998.

A qualified voter of the countywide highway district shall be eligible to vote for a countywide highway district commissioner residing in the elector's subdistrict, and the election shall be conducted as provided by Idaho statutes relating to holding general elections at the county level.

The highway commissioners shall take office on January 1 of the year immediately following their election, and each may be compensated in accordance with the provisions of [section 40-1314, Idaho Code](#), or receive a salary not to exceed one thousand two hundred dollars (\$1,200) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed one thousand four hundred dollars (\$1,400) per calendar month.

History.

I.C., § 40-1404A, as added by 1998, ch. 300, § 2, p. 989; am. 2001, ch. 44, § 2, p. 82; am. 2003, ch. 68, § 7, p. 227.

STATUTORY NOTES**Compiler's Notes.**

The phrase “the effective date of this act” in the first paragraph refers to the effective date of S.L. 1998, ch. 300, which was March 24, 1998.

The words “this act” refer to S.L. 1998, ch. 300, which is compiled as §§ 34-625, 34-625A, 40-1404, and 40-1404A.

§ 40-1404B. Vacancies — Filling a mid-term vacancy. — (1) Any vacancy occurring on the highway district board, other than by expiration of the term of office, shall be determined by the remaining highway district board using the criteria established in [section 59-901, Idaho Code](#).

(2) If it is determined that a vacancy has occurred as provided in subsection (1) of this section, the remaining highway district board shall declare there is a vacancy and such vacancy shall be filled as herein provided:

(a) The remaining highway district board shall have thirty (30) days to appoint a person to fill the vacancy.

(b) If a majority of the remaining highway district board so constituted shall be unable to agree upon an appointment of a person to fill the vacancy before the expiration of the thirty (30) day period, the remaining highway district board shall submit a list of three (3) nominations to the governor within five (5) days.

(c) The governor shall fill the vacancy within ten (10) days by appointing a person having the qualifications set forth herein. In the event the remaining highway district board fails to submit a list of three (3) nominations as set forth in this section, the governor shall have an additional ten (10) days to fill the vacancy by appointing a person having the same qualifications at the time of the appointment as those provided by law for election to the office.

(3) The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the vacant office.

(4) The term of the appointment shall be for the balance of the term of the person replaced.

(5) Appointment pursuant to the provisions of this chapter shall be in writing and filed with the secretary of the highway district, the clerk of the county commissioners and the tax collector of the county.

(6) Any person appointed to fill a vacancy, after filing the official oath and qualifying for the official bond in accordance with the provisions of [section 40-1405, Idaho Code](#), shall possess all the rights and powers, and is subject to all the liabilities, duties and obligations of the office filled.

History.

[I.C., § 40-1404B](#), as added by 2013, ch. 18, § 1, p. 28.

§ 40-1405. Organization of district — Officers — Official bonds. —

(1) Immediately after appointment, the county-wide highway district commissioners shall meet and organize, elect a chairman from their number, and appoint a secretary and treasurer who may also be from their number, for terms fixed by them. The offices of secretary and treasurer may be filled by the same person. Certified copies of all appointments, under the hand of each of the commissioners, shall be filed with the clerk of the county commissioners and with the tax collector of the county.

(2) The officers of the highway district shall take and file with their secretary an oath for the faithful performance of the duties of their respective offices. Each highway commissioner and director shall execute an official bond in the sum of not less than five thousand dollars (\$5,000). The treasurer on his appointment shall execute and file with the secretary an official bond in an amount of money equal to an amount that may come into his hands as treasurer. If a surety bond is given as provided in [section 41-2604, Idaho Code](#), the bond need not exceed one hundred thousand dollars (\$100,000), but in no case shall the amount of the bond be less than an amount set by the highway district commissioners.

History.

[I.C., § 40-1405](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1405 was repealed. See Prior Laws, § 40-1401.

§ 40-1406. Powers and duties of highway commissioners — One highway district in county — Highway powers of cities in county abolished — Laws in conflict superseded. — The highway commissioners of a county-wide highway district shall exercise all of the powers and duties provided in chapter 13 of this title, and are empowered to make highway ad valorem tax levies as provided by chapter 8, of this title. Only one (1) county-wide highway district shall be operative within a county where the electorate has voted affirmatively for the formation of a county-wide highway district. The district shall specifically be responsible for all county secondary and city highways and is hereby recognized as a body politic of this state. No city included within a county-wide highway district shall maintain or supervise any city highways, or levy any ad valorem taxes for the construction, repair or maintenance of city highways. No highway district included within a county-wide highway district, shall maintain any secondary highways or levy any ad valorem taxes for the construction, repair or maintenance of highways. Wherever any provisions of the existing laws of the state of Idaho are in conflict with the provisions of this chapter, the provisions of this chapter shall control and supersede all such laws. However, within the limits of any city, the city may expend city funds for the placement, care and removal of trees, shrubs, grass, and other plants, which are located within the rights-of-way of any highway of the county-wide highway district.

The commissioners of a county-wide highway district may pass ordinances, rules, and make all regulations, not repugnant to law, as necessary, for carrying into effect or discharging all powers and duties conferred to a county-wide highway district pursuant to this chapter and chapter 13 of this title. All ordinances created or passed by the commissioners of a county-wide highway district shall require the affirmative vote of two-thirds (2/3) of the members of the full county-wide highway district commission. The style of all ordinances shall be: “BE IT ORDAINED by the board of highway district commissioners of (.) County, Idaho.” All ordinances passed shall, before they take effect and within one (1) month after they are passed, be published in at least one (1) issue of a newspaper published in the county or, if no paper be published in

the county, then in some paper having general circulation therein. After such publication and before its effective date, such proposed ordinance shall not thereafter be amended in any particular wherein the amendment shall impose terms, conditions or privileges less favorable to the county-wide highway district than the proposed ordinance as published; but amendment favorable to the county-wide highway district may be made at any time and after publication. All ordinances passed pursuant to this section by the board of county-wide highway district commissioners may be proved by a certificate of the secretary of the county-wide highway district under the seal of the board of the county-wide highway district commissioners and shall be read and received in evidence in all courts and administrative proceedings without further proof. If ordinances duly passed are printed or published in book or pamphlet form by authority of the county-wide highway district commissioners, the printed or published book or pamphlet shall also be read and received in evidence in all courts and administrative proceedings without further proof. The commissioners of the county-wide highway district may enforce such ordinances by all appropriate administrative or judicial proceedings.

History.

[I.C., § 40-1406](#), as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 298, § 1, p. 942.

STATUTORY NOTES

Prior Laws.

Former § 40-1406 was repealed. See Prior Laws, § 40-1401.

CASE NOTES

[Legislative intent.](#)

[Utility franchises.](#)

[Legislative Intent.](#)

This section cannot be construed to suggest that the legislature bestowed authority on a highway district to grant franchises to public utilities; such an interpretation is clearly contrary to the grant of powers given to the

highway districts by the legislature. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Utility Franchises.

The highway district legislation contained in title 40, chapter 13, and this chapter, does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Highway district's reliance upon this section as the basis for asserting that it supersedes the law controlling utility franchises is misplaced, as the language of this section is primarily in reference to imposition of ad valorem taxes and cannot be extended to replace the constitutional and statutory provisions controlling utility franchises. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

It is undisputed that municipal corporations have the power to operate their own utility systems and provide water, power, light, gas and other utility services within the city limits, and the constitutional and statutory grant of franchise authority to the cities in this respect is not nullified or altered by this section. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

§ 40-1406A. Summarization of ordinances permitted — Requirements. — (1) In lieu of publishing the entire ordinance under **section 40-1406, Idaho Code**, the highway district may publish a summary of the ordinance, which summary shall be approved by the governing body and which shall include:

- (a) The name of the highway district;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
- (e) Any other information necessary to provide an accurate summary; and
- (f) A statement that the full text is available at the highway district office.

(2) Notwithstanding subsection (1) of this section, whenever any publication is made under this section and the proposed or adopted ordinance contains legal descriptions or contains provisions regarding taxation or penalties concerning real property, those sections containing such information shall be published in full and shall not be summarized. In the case of a legal description of real property, the notice shall also include the street address or addresses of the property described, if any. In the case of a description covering one (1) or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for a written legal description of property provided such maps contain sufficient detail to clearly define the area with which the ordinance is concerned.

(3) Before submission of a summary to a newspaper for publication under this section, the legal advisor of the highway district shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

(4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided by the highway district clerk

to any citizen on personal request.

History.

I.C., § 40-1406A, as added by 2001, ch. 334, § 1, p. 1176.

§ 40-1407. Dissolution of existing districts or systems — Transfer of funds. — In any county where the electorate adopts a county-wide highway district under the provisions of this chapter and at the time of reorganization of the district, city highway systems, highway districts, and/or county highway systems already exist, the commissioners shall dissolve those districts or systems and transfer all funds to the reorganized county-wide highway district.

History.

I.C., § 40-1407, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 3, p. 419.

STATUTORY NOTES

Prior Laws.

Former § 40-1407 was repealed. See Prior Laws, § 40-1401.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1408. Expense of notices and dissolution proceedings. — The expense of all notices and proceedings in relation to the dissolution of a city highway system, highway district and/or county highway system shall be chargeable to and borne by each respective city highway system, highway district and/or county highway system dissolved.

History.

I.C., § 40-1408, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 4, p. 419.

STATUTORY NOTES

Prior Laws.

Former § 40-1408 was repealed. See Prior Laws, § 40-1401.

§ 40-1409. Expenses of election. — In all counties where elections are held under the provisions of this chapter, county commissioners shall pay expenses of the elections from the election fund of the county.

History.

I.C., § 40-1409, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 78, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1410. Existing systems and districts — Transfer — Liability. —

(1) When a county-wide highway district has been adopted, all city highway systems, highway districts and county highway departments shall prepare an inventory and financial statement and file the statement with the commissioners not later than ten (10) days subsequent to the canvass of the election.

(2) Title to all machinery, buildings, lands and property of every kind and nature, belonging to each city highway system, highway district and county highway system shall immediately upon the dissolution of the system or district and without further conveyance, be vested in the commissioners as custodians, and immediately thereafter, as soon as may be practical, delivered to the succeeding county-wide highway district and the district shall be liable for any and all unliquidated obligations of dissolved city highway systems, highway districts or county highway systems.

History.

I.C., § 40-1410, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 5, p. 419.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1411. Apportionment of funds to pay debts of dissolved districts.

— Each year after its dissolution and until all indebtedness, including outstanding warrants of a dissolved system or district shall have been fully paid, it shall be the duty of the succeeding county-wide highway district in which the districts were situated, to apportion for the benefit of any dissolved county or city highway system, or highway district that portion of moneys arising out of the highway users' moneys and the moneys from all other sources as the system or district would be entitled to receive had it not been dissolved. The treasurer of the succeeding county-wide highway district shall place the moneys to the credit of the county-wide district in a special fund in the county treasury with other funds belonging to the district, the funds to be used for payment of the dissolved system's or district's bonded or funded indebtedness.

History.

I.C., § 40-1411, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1412. Control of bridges and highways in dissolved systems and districts — Sidewalks — Special assessments. — (1) After the dissolution of any county highway system, city highway system or highway district, the county-wide highway district of the county in which the dissolved system or district was situate, shall have the same control over all bridges and highways of the system or district as is vested in the commissioners, highway district commissioners or city councils as provided for in [section 40-801, Idaho Code](#).

(2) A county-wide highway district may provide by general ordinance for the construction, repair, replacement or removal of sidewalks which are deemed by the highway district commissioners to be dangerous and unsafe, and assess the costs as provided in subsection (3) of this section to the property in front of which the same shall be constructed, repaired or laid.

(3) All special assessments levied to which the provisions of this chapter are made applicable shall be due and payable to the treasurer of the county-wide highway district, and if not paid within thirty (30) days after mailing of notification of assessment, shall be declared delinquent, be certified to the tax collector of the county by the district treasurer, and shall be placed by the tax collector upon the tax roll and collected in the same manner and subject to the same penalties as other taxes. All money received on special assessments shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and the money shall be used for no other purpose than to reimburse the highway district for money expended for the improvement.

(4) The tax collector of the county shall pay on demand to the treasurer all money received by him arising from ad valorem taxes or assessments levied.

History.

[I.C., § 40-1412](#), as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Cited City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1413. Balance of funds of dissolved system or district — Disposition — No funds to city. — (1) After final payment of all expenses of proceedings and of all legal claims, liabilities, bonded and other indebtedness in relation to dissolution of a dissolved system or district, and after liquidation and winding up of the affairs of the system or district, all surplus moneys of the dissolved district remaining in the special fund of the dissolved city highway system, highway district and/or county highway department shall immediately be delivered to the treasurer of the county-wide highway district.

(2) No city whose incorporated limits lie wholly or partially within the boundaries of a dissolved highway district shall be entitled to receive any share of the moneys of the dissolved highway district.

History.

I.C., § 40-1413, as added by 1985, ch. 253, § 2, p. 586; am. 1988, ch. 221, § 6, p. 419.

§ 40-1414. Creation of local improvement districts. — In addition to the powers granted to county-wide highway districts under the provisions of this chapter, the districts are empowered to create local improvement districts for construction, reconstruction and maintenance of highways and accompanying curbs, gutters, culverts, sidewalks, paved medians, bulkheads and retaining walls within the boundaries of the highway districts.

The organization and operation of the local improvement districts shall be as nearly as practicable as prescribed in chapter 17, title 50, Idaho Code.

History.

I.C., § 40-1414, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1415. Responsibilities of single county-wide highway districts within cities — Final decision on urban renewal projects — Settlement of questions. — (1) County-wide highway districts organized under the provisions of this chapter, within the limits of any city shall be responsible for the design, construction, reconstruction and maintenance of city rights-of-way and accompanying curbs, gutters, culverts, sidewalks, paved medians, bulkheads and retaining walls. Within city rights-of-way, design, construction, reconstruction and maintenance shall include:

- (a) Traffic and safety engineering for both motorist and pedestrian traffic;
- (b) Procurement and installation of highway lighting where it is primarily of benefit to the motorist. Energy costs and maintenance of lighting shall subsequently be a function of the city;
- (c) Procurement, installation, operation and maintenance of traffic control devices where they are needed for traffic control; and
- (d) Drainage where it is necessary for motorist safety or necessary for right-of-way maintenance.

(2) Acquisition and acceptance of rights-of-way shall be the responsibility of the county-wide highway district.

(3) In matters of urban renewal projects, the city involved shall make the final decision concerning approval of the project based on the overall plan of the city. Prior to approval of an urban renewal project, the city shall submit the plan to the highway district for review and recommendations in accordance with subsection (1) of this section. The highway district shall submit its written recommendations with respect to the proposed urban renewal plan to the city within thirty (30) days after receipt of the plan for review. Upon receipt of the recommendations of the highway district, or if no recommendations are received within thirty (30) days, then the city may proceed without recommendations with the hearing on the proposed urban renewal project, and the highway district shall be responsible, as between the city and the highway district, for funding the district's responsibilities as provided by subsection (1) of this section. Agreements entered into by a city pursuant to an urban renewal project prior to dissolution of the city

highway system and organization of the successor highway district shall be binding upon the county-wide highway district.

(4) The highway district shall be responsible for planning and location of rights-of-way. In planning for and determining location of rights-of-way, the highway district shall submit to the appropriate planning agency the proposed location of the rights-of-way. In locating rights-of-way the highway district shall take into consideration the comprehensive general plan of the appropriate county or city planning agency. In planning for the location of rights-of-way, the highway district shall comply with all appropriate provisions of chapter 65, title 67, Idaho Code.

(5) The city shall retain jurisdiction and responsibility for outstanding local improvement district bonds or warrants sold or issued by the city prior to dissolution of the city highway system and organization of the successor highway district.

(6) All subdivision plats required to be submitted for acceptance and approval to the city and the county under the provisions of chapter 13, title 50, Idaho Code, shall be submitted to the highway district for consideration for acceptance and approval as to continuity of highway pattern, widths, drainage provisions, right-of-way construction standards, traffic flow, the traffic volume demand occasioned by the proposed subdivision either within or without the boundaries of the proposed subdivision, and other matters pertaining to the function of the highway district.

(7) Within the limits of any city, the city may expend city funds for the placement, care and removal of trees, shrubs, grass, and other plants, which are located within the rights of way of any highway of the county-wide highway district.

(8) A city, after advising the board of highway district commissioners of its intent, shall be responsible for the placement, care and removal of any parking meters within the limits of any city, and for the enforcement of ordinances regulating the use of parking meters, which are located within the rights-of-way of any highway of the county-wide highway district. The city shall be entitled to all of the revenues received from parking meters.

History.

I.C., § 40-1415, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1416. Authorization for voters to approve vehicle registration fee. — (1) Notwithstanding the provisions of [section 49-207, Idaho Code](#), the voters of any county in which a countywide highway district is organized pursuant to chapter 14, title 40, Idaho Code, may authorize the countywide highway district to adopt a resolution by a majority vote of the countywide highway district commissioners to implement and collect a motor vehicle registration fee not to exceed two (2) times the amount established in [section 49-402, Idaho Code](#). The authorization to adopt, implement, and collect a vehicle registration fee may be made by the registered voters of the county only at a general election held in even-numbered years, and a simple majority of the votes cast on the question shall be necessary to authorize the fee.

(2) In any election, the resolution submitted to the county voters shall: (a) State the exact rate of the fee; and (b) State the duration of the fee.

No rate shall be increased and no duration shall be extended without the approval of the voters, by the same simple majority of the votes cast.

An election to approve or disapprove the adoption of a vehicle registration fee may be called for by the adoption of a resolution by a majority vote of the countywide highway district commissioners. Any costs incurred to conduct the election for the district shall be paid by the county.

(3) Any countywide highway district authorized to adopt a resolution for a vehicle registration fee shall contract with the department for the collection, distribution, and administration of the fee in like manner, and under the definitions and rules for the collection and administration of other registration fees as set forth in chapter 4, title 49, Idaho Code. Monthly, following receipt by the department of revenues from the implementation of a vehicle registration fee, the department shall remit the same to the countywide highway district implementing such fee, less a deduction for such amount as may be agreed upon between the department and the commissioners of the countywide highway district, for the department's actual costs for collection and administration of the fee. The vehicle registration fee shall not become part of the state highway account or state highway distribution account.

(4) The countywide highway district must use the funds generated by a vehicle registration fee exclusively for the construction, repair, maintenance, and traffic supervision of the highways within its jurisdiction, and the payment of interest and principal of obligations incurred for said purposes.

(5) Sections 49-405, 49-408, 49-416, 49-404, 49-409, 49-415 and 49-410, Idaho Code, shall be subject to the provisions of this section.

History.

I.C., § 40-1416, as added by 1986, ch. 260, § 1, p. 679; am. 1987, ch. 125, § 1, p. 255; am. 1988, ch. 265, § 571, p. 549; am. 1991, ch. 285, § 2, p. 733; am. 2009, ch. 341, § 79, p. 993.

STATUTORY NOTES

Cross References.

State highway account, § 40-702.

State highway distribution account, § 40-701.

Amendments.

The 2009 amendment, by ch. 341, in the last sentence in subsection (2), deleted “shall be a charge against the district, and” following “district” and substituted “county” for “district”; in the first sentence in subsection (3), deleted “and regulations” following “rules”; and, in subsection (5), deleted “code” preceding “section.”

Effective Dates.

Section 586 of S.L. 1987, ch. 265 provided that the act should become effective on and after January 1, 1989.

Section 4 of S.L. 1991, ch. 285 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1991. Approved April 4, 1991.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Idaho Code § 40-1417

§ 40-1417. Application of campaign reporting law to countywide highway district elections. [Repealed.]

Repealed by S.L. 2019, ch. 288, § 22, effective January 1, 2020. See § 67-6601 et seq.

History.

I.C., § 40-1417, as added by 1997, ch. 359, § 1, p. 1060.

§ 40-1418. Proceedings for dissolution of existing single countywide highway district. — All proceedings for the dissolution of single countywide highway districts shall be initiated by a petition of ten percent (10%) or more of the qualified electors residing in each of the county commissioner subdistricts, addressed to the commissioners of the county in which the single countywide highway district is situate, and which shall concisely state the grounds or reasons for the dissolution and contain a request for a hearing of the petition. A hearing on the petition shall be conducted pursuant to [sections 40-1803 through 40-1805, Idaho Code](#). Following the hearing on the petition, the election and process for dissolution shall be conducted as provided in title 34, Idaho Code. The election shall be held at the next general election and in the event a majority of the qualified electors at the election vote in favor of dissolution, the commission shall immediately make and enter an order declaring the single countywide highway district dissolved.

History.

[I.C., § 40-1418](#), as added by 2004, ch. 361, § 1, p. 1081; am. 2009, ch. 341, § 80, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, substituted “title 34, Idaho Code” for “[sections 40-1806 through 40-1821, Idaho Code](#)” in the third sentence.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Chapter 15

CONSOLIDATION OF HIGHWAY DISTRICTS

Sec.

40-1501. Highway districts — Consolidation — Effect of consolidation.

40-1502. Petitions for consolidation.

40-1503. Order for hearing — Notice.

40-1503A. Jurisdiction of commissioners of good road districts over good roads district systems. [Repealed.]

40-1504. Publication of notice.

40-1505. Hearing — Order for election — Consolidation, when defeated.

40-1506. Polling places — Election officers.

40-1507. Notice of election — Publication and contents.

40-1508. Elections — Time of holding.

40-1509. Conduct of elections.

40-1510. Defeat of proposal — Subsequent elections.

40-1511. Count of votes — Canvass — Order for consolidation.

40-1512. Subdivision of district — Appointment of highway commissioners — Consolidation, when effective.

40-1513. Highway district laws applicable — Exceptions — Tax levies.

40-1514. Organization of highway district commissioners — Computation of indebtedness of former districts.

40-1515. Property and moneys of former districts — Delivery to consolidated highway district.

40-1516. Separate accounts of funds and proceeds from former highway districts — Duties of treasurer.

40-1517. Funding of indebtedness of former highway districts.

40-1518. Indebtedness prior to consolidation — Liability of property in former highway districts.

40-1519. Expenses of election.

§ 40-1501. Highway districts — Consolidation — Effect of consolidation. — Any highway district within the state, whether the same are situated entirely within the boundaries of any one (1) county or within two (2) or more adjoining counties, may be consolidated with any adjoining highway district, whether situated entirely within the boundaries of any county or within two (2) or more adjoining counties.

History.

I.C., § 40-1501, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 2, p. 502.

STATUTORY NOTES

Prior Laws.

The following sections comprising former chapter 15 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985:

40-1501. I.C.A., § 39-1401A, as added by 1933, ch. 163, § 2, p. 291.

40-1502. 1905, p. 237, §§ 5, 10; compiled R.C., § 1053; compiled and reen. C.L., § 1053; C.S., § 1481; I.C.A., § 39-1405.

40-1503. R.C., § 1053a, as added by 1917, ch. 30, § 1, p. 73; reen. C.L., § 1053a; C.S., § 1482; I.C.A., § 39-1406.

40-1504. 1905, p. 237, § 6, and parts of §§ 5, 9; compiled R.C., § 1054; am. 1911, ch. 67, § 1, p. 189; reen. C.L., § 1054; C.S., § 1483; I.C.A., § 39-1407; am. 1933, ch. 163, § 3, p. 291.

40-1505. 1905, p. 237, § 7; reen. R.C. & C.L., § 1055; C.S., § 1484; I.C.A., § 39-1408.

40-1506. 1905, p. 237, § 8, and first part of § 9; compiled R.C., § 1056; am. 1909, § 1, p. 172; am. 1915, ch. 12, § 1, p. 48; reen. C.L., § 1056; C.S., § 1485; I.C.A., § 39-1409; am. 1963, ch. 294, § 3, p. 774.

40-1507. 1905, p. 237, § 11; reen. R.C. & C.L., § 1057; C.S., § 1486; I.C.A., § 39-1410.

40-1508. 1905, p. 237, § 13; reen. R.C. & C.L., § 1059; C.S., § 1488; I.C.A., § 39-1412.

40-1509. 1905, p. 237, § 14; reen. R.C. & C.L., § 1060; C.S., § 1489; I.C.A., § 39-1413.

49-1510, 49-1511. 1931, ch. 219, §§ 1, 2, p. 425; I.C.A., §§ 39-1414, 39-1415.

49-1512, 49-1513. 1931, ch. 221, §§ 1, 2, p. 425; I.C.A., §§ 39-1416, 39-1417.

49-1514. **I.C., § 40-1514**, as added by 1959, ch. 35, § 1, p. 72.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 12 et seq.

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1502. Petitions for consolidation. — (1) Whenever electors of two (2) or more existing adjoining highway districts desire to consolidate those districts, a petition from each of the districts for consolidation, signed by five percent (5%) or twenty-five (25) electors, whichever is greater, qualified to vote at a highway district election in each of the highway districts, shall be presented to the commissioners of the county in which the highway districts are situated. The petitions shall state the name and, in a general way, describe the highway districts which it is proposed to consolidate.

(2) A majority of the elected commissioners of each of two (2) or more existing adjoining highway districts may also, on their own initiative, petition the county commissioners, in lieu of a petition as provided in subsection (1) of this section.

History.

I.C., § 40-1502, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 3, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1502 was repealed. See Prior Laws, § 40-1501.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1503. Order for hearing — Notice. — The commissioners of the counties concerned, shall at the earliest possible date, meet at a time and place as shall be agreed upon by them, and at the meeting shall, by order, entered in the minutes of the commissioners of each of the counties concerned, fix a time and place for a hearing upon the petitions, which time shall not be less than sixty (60) days from and after the date of the first publication of notice of the petition and hearing on them. The hearing meeting shall be at the county seat of one of the counties concerned. At the meeting the commissioners shall prepare a notice of hearing to be signed by them and attested by the county clerks, setting forth the filing of petitions; the name and general description of the highway districts proposed to be consolidated; the total bonded and current warrant and other indebtedness; the market value for assessment purposes and the last preceding ad valorem tax levy of each of the highway districts; a statement that at the hearing any elector qualified to vote at elections of highway district commissioners of the highway districts proposed for consolidation may, prior to or at the time of the hearing, file with the clerk of the commissioners of the county in which he resides, written objections to the proposed consolidation; and that at the hearing any qualified elector of the highway districts proposed for consolidation may appear and make oral objections to the consolidation.

History.

I.C., § 40-1503, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 4, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1503 was repealed. See Prior Laws, § 40-1501.

§ 40-1503A. Jurisdiction of commissioners of good road districts over good roads district systems. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1503A, as added by 1963, ch. 294, § 2, p. 774, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-1504. Publication of notice. — The clerk of commissioners of each of the counties concerned shall cause to be published a copy of notice as provided by [section 40-206, Idaho Code](#).

History.

[I.C., § 40-1504](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Compiler's Notes.

Former § 40-1504 was repealed. See Compiler's notes, § 40-1501.

§ 40-1505. Hearing — Order for election — Consolidation, when defeated. — At the time and place specified in the notice, the county commissioners shall proceed to consider the petition and all written and oral objections, and shall hear all qualified persons in relation to it. Upon conclusion of the hearing, which may be continued from day to day, if a majority of the members of each of the commissioners of the counties involved are of the opinion that a consolidation is practical and to the best interests of each and all of the highway districts concerned, they shall make an order directing that the question of consolidation of the highway districts proposed for consolidation be submitted to the electors at an election to be held separately within each of the highway districts at a date in conformance with [section 34-106\(1\), Idaho Code](#), but not less than ninety (90) days after the date of the order. The date of the election shall be specified in the order. The order shall set forth: the name, number, and general description of the respective highway districts proposed to be consolidated; the market value for assessment purposes of all the property situated in each of the concerned highway districts, as shown by the last county assessment rolls; the total bonded and current warrant and other indebtedness of each of the highway districts; the preceding ad valorem highway tax levy of each of the highway districts; and the total bonded and current warrant and other indebtedness of the proposed consolidated highway district. A copy of the order shall be entered in the minutes of the commissioners of each county concerned. The proposed consolidation shall be defeated if a majority of the commissioners of either of the counties concerned vote against it, and in that event a record of that action shall be entered in the minutes of each of the counties concerned.

History.

[I.C., § 40-1505](#), as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 5, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1505 was repealed. See Prior Laws, § 40-1501.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1506. Polling places — Election officers. — The commissioners of each county concerned shall meet within thirty (30) days, in either special or regular session and, by order, enter in their minutes and designate the polling places in each of the concerned highway districts situated in the county, and the county clerk shall appoint judges.

History.

I.C., § 40-1506, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 6, p. 502; am. 2009, ch. 341, § 81, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1506 was repealed. See Prior Laws, § 40-1501.

Amendments.

The 2009 amendment, by ch. 341, inserted “the county clerk shall” and deleted “two (2) or more” preceding “judges” and “and one (1) or more clerks for each polling place, who shall possess the qualifications necessary to entitle them to vote at an election of highway district commissioners in the highway district proposed for consolidation” from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Elections, § 86 et seq.

§ 40-1507. Notice of election — Publication and contents. — The commissioners of each county shall require its county clerk to give notice of the election in accordance with the provisions of title 34, Idaho Code. In addition, the notice shall state the purpose and date of the election, the hours during which the polls shall be open and list the polling places, in addition to the following: the name and general description of the respective highway districts proposed to be consolidated; the market value for assessment purposes of all the property situated in each of the concerned highway districts, as shown by the last county assessment rolls; the total bonded and current warrant and other indebtedness of each of the highway districts; the preceding property highway tax levy of each of the highway districts; and the total bonded and current warrant and other indebtedness of the proposed consolidated highway district.

History.

I.C., § 40-1507, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 7, p. 502; am. 2009, ch. 341, § 82, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1507 was repealed. See Prior Laws, § 40-1501.

Amendments.

The 2009 amendment, by ch. 341, in the first sentence, inserted “county,” deleted “by causing notices to be posted in at least three (3) public places within each of the highway districts situated within the county and concerned in a proposed consolidation for at least twenty one (21) days prior to the date of election, and in addition to the posting, shall cause a copy of the notice to be published” following “give notice of the election,” and substituted “title 34, Idaho Code” for “[section 40-206, Idaho Code](#)”; and, in the last sentence, added “In addition,” deleted “and the qualifications required of voters” following “polling places,” and substituted “property highway tax levy” for “ad valorem highway tax levy.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, § 275 et seq.

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1508. Elections — Time of holding. — An election held under the provisions of this chapter shall be held in each of the highway districts and counties affected by the proposed consolidation and shall be held on the same day and conducted in accordance with the provisions of title 34, Idaho Code.

History.

I.C., § 40-1508, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 8, p. 502; am. 2009, ch. 341, § 83, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1508 was repealed. See Prior Laws, § 40-1501.

Amendments.

The 2009 amendment, by ch. 341, deleted “separate and distinct” following the first occurrence of “shall be,” inserted “held,” and substituted “shall be held on the same day and conducted in accordance with the provisions of title 34, Idaho Code” for “shall be held on the same day and between the hours of 8:00 a.m. and 8:00 p.m.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1509. Conduct of elections. — (1) The polls shall be presided over by the appointed judges and clerks who must take an oath as judge and clerk of the highway district election and which oath shall obligate the judges and clerks to faithfully perform the duties of a board of election.

(2) All elections shall be by secret and separate ballot, each ballot in type, print or legible writing, stating in the affirmative and negative the proposition to be voted upon, and all ballots shall be in a form that the voters may express a choice by the marking of a cross (X).

(3) In all elections it is intended that no informalities in conducting the election shall invalidate the election, if the election has been otherwise fairly conducted. The clerks of the county commissioners shall prepare the necessary ballots for use in each of the highway districts.

History.

I.C., § 40-1509, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 9, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1509 was repealed. See Prior Laws, § 40-1501.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, § 298 et seq.

§ 40-1510. Defeat of proposal — Subsequent elections. — The failure to carry the proposal to consolidate highway districts by at least a majority vote in any one (1) of the highway districts concerned shall defeat the entire proposal. Subsequent elections to consolidate highway districts having failed to be consolidated as provided in this chapter shall not be considered for consolidation under the provisions of this chapter for a period of four (4) years after the consolidation election.

History.

I.C., § 40-1510, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 10, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1510 was repealed. See Prior Laws, § 40-1501.

§ 40-1511. Count of votes — Canvass — Order for consolidation. — Immediately following the close of the polls, the votes shall be counted in accordance with the provisions of title 34, Idaho Code. The board of county commissioners shall meet separately at their respective county seats and pursuant to chapter 12, title 34, Idaho Code, canvass the returns within each county. Within fifteen (15) days after the canvass, the commissioners shall meet in joint session at a location as shall be agreed upon by them and compile the total votes cast in their respective counties for or against the proposal to consolidate the highway districts concerned. If the proposal carried in each of the highway districts concerned, the county commissioners in the joint meeting shall make and enter an order declaring the districts consolidated in one (1) highway district of a name or designation as may be ordered by them, and at that time the consolidation shall be effective. The highway districts having been consolidated shall remain in operation, with all legal authority of a highway district, until the newly appointed highway commissioners of the consolidated highway district meet and organize as provided in this chapter.

History.

I.C., § 40-1511, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 11, p. 502; am. 2009, ch. 341, § 84, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1511 was repealed. See Prior Laws, § 40-1501.

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, § 356 et seq.

§ 40-1512. Subdivision of district — Appointment of highway commissioners — Consolidation, when effective. — At the joint meeting, as provided by [section 40-1511, Idaho Code](#), by a majority vote of all the commissioners present, the territory consolidated in one (1) highway district shall be divided into three (3) subdistricts, as provided by [section 40-1304, Idaho Code](#). Highway commissioners for the consolidated highway district shall be appointed by the governor, as provided for by [section 40-1303, Idaho Code](#).

History.

[I.C., § 40-1512](#), as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 12, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1512 was repealed. See Prior Laws, § 40-1501.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1513. Highway district laws applicable — Exceptions — Tax levies. — After the consolidation is effective, statutes relating to highway districts shall be applicable to the joint consolidated highway district, except as otherwise provided in this chapter. The assessing of property, the levying and collection of ad valorem taxes and all accounts which from their nature should be separately kept, shall be done and kept and the report on them made as if each portion of the consolidated district were a separate highway district in the respective counties. Nothing in this chapter shall be construed as preventing the new highway district board from levying ad valorem taxes against property within the consolidated district in accordance with chapter 8, title 40, Idaho Code.

History.

I.C., § 40-1513, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 13, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1513 was repealed. See Prior Laws, § 40-1501.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1514. Organization of highway district commissioners — Computation of indebtedness of former districts. — Immediately after consolidation is effected and highway commissioners are appointed, they shall meet and organize as provided by law, appoint required officers and designate a time and place for their meetings and have and exercise all the powers, jurisdiction, and authority and perform all duties and be subject to the responsibilities and liabilities of a highway district as provided by law. Upon organization, the highway district shall ascertain and compute all indebtedness, including bonded, warrant and current indebtedness, separately, of each of the former highway districts comprising the consolidation.

History.

I.C., § 40-1514, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 14, p. 502.

STATUTORY NOTES

Prior Laws.

Former § 40-1514 was repealed. See Prior Laws, § 40-1501.

§ 40-1515. Property and moneys of former districts — Delivery to consolidated highway district. — All property rights of the former highway districts shall be vested in and become the property of the consolidated highway district. The highway district commissioners and officers of each of the former highway districts comprising the consolidated highway district shall, immediately after consolidation is effected and the consolidated highway district commissioners have met and organized, turn over and deliver to them all property of every kind and description belonging to the former highway districts, including all moneys, books and accounts.

History.

I.C., § 40-1515, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 15, p. 502.

CASE NOTES

Cited Daugharty v. Post Falls Hwy. Dist., 134 Idaho 731, 9 P.3d 534 (2000); City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1516. Separate accounts of funds and proceeds from former highway districts — Duties of treasurer. — The highway district treasurer shall keep separate accounts of all moneys coming into his hands from each of the former highway districts, together with all moneys received from special tax levies against the taxable property situated within the boundaries of the former highway districts and together with all moneys paid out upon the indebtedness of the former highway districts. He shall pay from the funds in the accounts the amounts as the highway commissioners may from time to time order.

History.

I.C., § 40-1516, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 16, p. 502.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1517. Funding of indebtedness of former highway districts. — If the consolidated highway district commissioners determine that valid outstanding indebtedness of any of the former highway districts, existing prior to the consolidation may be funded or refunded to the profit and benefit of the taxpayers within the boundaries of the former highway district, and without incurring any additional liability, the highway commissioners have the power and authority to make provision for issuing of funding or refunding bonds in an amount equal to the unpaid principal and interest on the outstanding bonds or other indebtedness. Before the highway commissioners shall issue any bonds to refund any outstanding indebtedness, it shall cause all moneys of the former highway district on hand available for the payment and discharge of any indebtedness to be applied in payment and discharge of them and issue funding or refunding bonds only for the remainder of the indebtedness. The issuance of bonds shall not create any liability against the consolidated highway district or any of the property within its boundaries, excepting that the property within the boundaries of the former highway district shall be liable for the payment of the bonds.

History.

I.C., § 40-1517, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 17, p. 502.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1518. Indebtedness prior to consolidation — Liability of property in former highway districts. — It is expressly provided that property situated within the boundaries of a former highway district shall be liable for the indebtedness of that district existing prior to consolidation, but shall not be liable for the indebtedness of any other highway district forming a consolidation and existing prior to the consolidation.

History.

I.C., § 40-1518, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 202, § 18, p. 502.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Decisions Under Prior Law

Assessment for taxation by district.

Contribution from new district.

Estoppel.

Assessment for Taxation by District.

Where a new highway district was formed out of territory in another district, it was the duty of the commissioners to levy a tax on the annual assessed valuation of the old districts, and not on the assessed valuation at the time of the formation of the new district; such levy was for the purpose of payment of the bonded indebtedness of the old district. *Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist.*, 55 Idaho 400, 42 P.2d 1007 (1935).

Contribution from New District.

Where district was separated, the original district was entitled to contribution from the successor for expense in administering payment of the bonds outstanding at time of separation, since the separated portion of the original district would have borne its share had there been no separation.

Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist., 65 Idaho 260, 142 P.2d 579 (1943).

Estoppel.

Where two (2) districts were organized to take over part of a third district and the first participated with the latter in the disposition of auto license fees and used ad valorem taxes to pay its share of outstanding bonds and the latter, with full knowledge and acquiescence of former, used part of its license fees to pay its share, the former was estopped from complaining because all the fees were not used before an ad valorem levy was made. Murtaugh Hwy. Dist. v. Twin Falls Hwy. Dist., 65 Idaho 260, 142 P.2d 579 (1943).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 150.

§ 40-1519. Expenses of election. — In all counties where highway district consolidation elections are held under the provisions of this chapter, county commissioners shall pay expenses of the elections from the election fund of the county.

History.

I.C., § 40-1519, as added by 2000, ch. 202, § 19, p. 502; am. 2009, ch. 341, § 85, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the section catchline, deleted “Proration to highway districts — Appeals” from the end; substituted “election fund” for “general fund” and deleted the last two sentences, which dealt with prorated expenses and appeals procedure.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Chapter 16

DETACHMENT OR ANNEXATION OF TERRITORY

Sec.

Detachment

40-1601. Districts subject to detachment.

40-1602. Petition.

40-1603. Order for hearing upon petition.

40-1604. Notice of hearing and petition.

40-1605. Hearing — Order for election.

40-1605A. Appointment to fill vacancy. [Repealed.]

40-1606. Election officers and polling districts — Notice of election.

40-1607. Election procedure.

40-1608. Order declaring territory detached.

40-1609. Effect of detachment of territory — Apportionment of indebtedness.

40-1610. Detached territory subject to county levies.

40-1611. Validity of outstanding bonds and warrants not affected.

40-1612, 40-1613. [Reserved.]

Annexation

40-1614. Territory disannexed from another county or adjacent to an existing highway district and within the county.

40-1615. Petition for annexation.

40-1616. Required exhibits in connection with petition.

40-1617. Hearing on petition — Notice.

- 40-1618. Objections to petition — Hearing.
- 40-1619. Approval or rejection of petition.
- 40-1620. Order of annexation.
- 40-1621. Filing of certified copies of order.
- 40-1622. Effect of annexation.
- 40-1623. Contesting proceedings — Time limit.
- 40-1624. Annexation of contiguous territory.
- 40-1625. Election date where territory lies in more than one county.
- 40-1626. Petition for election — Election.
- 40-1627. Majority vote required approving annexation — Action of commissioners.
- 40-1628. Certification by commissioners of order approving annexation.
- 40-1629. Taxation of annexed area for outstanding obligations.
- 40-1630. Payment of costs of election.
- 40-1631 — 40-1678. [Repealed.]

DETACHMENT

« Title 40 •, « Ch. 16 », • § 40-1601 »

Idaho Code § 40-1601

§ 40-1601. Districts subject to detachment. — A portion of the territory of an existing highway district, whether the district is situated wholly in one (1) county or in two (2) or more counties, may be detached from the highway district as provided in this chapter.

History.

I.C., § 40-1601, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

The following sections comprising part of former chapter 16 of title 40 were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1601. I.C.A., § 39-1501A, as added by 1933, ch. 131, § 2, p. 201.

40-1602. C.S., § 1491-B, as added by 1923, ch. 80, § 2, p. 92; I.C.A., § 39-1504.

40-1603. 1917, ch. 61, § 3, p. 190; am. C.L. 62:6b; am. 1919, ch. 74, § 1, p. 258; C.S., § 1497; I.C.A., § 39-1510.

40-1604. 1911, ch. 55, § 7, p. 124; reen. C.L. 62:7; C.S., § 1499; I.C.A., § 39-1512.

40-1605. 1911, ch. 55, § 8, p. 125; reen. C.L. 62:8; C.S., § 1500; am. 1925, ch. 195, § 1, p. 362; am. 1927, ch. 31, § 4, p. 40; I.C.A., § 39-1513; am. 1980, ch. 89, § 1, p. 193.

40-1606. 1911, ch. 55, § 9, p. 125; reen. C.L. 62:9; C.S., § 1501; am. 1925, ch. 195, § 2, p. 362; I.C.A., § 39-1514; am. 1947, ch. 22, § 1, p. 20; am. 1978, ch. 77, § 1, p. 152.

40-1607. 1911, ch. 55, § 12, p. 126; am. 1913, ch. 146, § 1, p. 512; am. 1917, ch. 147, p. 462; reen. C.L. 62:12; am. 1919, ch. 170, p. 542; C.S., § 1504; I.C.A., § 39-1517.

40-1608. 1911, ch. 55, § 13, p. 127; reen. C.L. 62:13; C.S., § 1505; I.C.A., § 39-1518.

40-1609. C.S., § 1505-A as added by 1927, ch. 253, § 1, p. 428; I.C.A., § 39-1519.

40-1610. 1911, ch. 55, § 14, p. 127; reen. C.L. 62:14; C.S., § 1506; I.C.A., § 39-1520; am. 1959, ch. 31, § 1, p. 67.

40-1611. 1911, ch. 55, § 15, p. 127; reen. C.L. 62:15; C.S., § 1507; I.C.A., § 39-1521; am. 1935 (2d E.S.), ch. 8, § 1, p. 17; am. 1974, ch. 12, § 34, p. 61; am. 1982, ch. 304, § 1, p. 765.

40-1612. 1911, ch. 55, § 16, p. 129; reen. C.L. 62:16; am. 1919, ch. 164, p. 532; C.S., § 1508; am. 1923, ch. 77, § 1, p. 86; am. 1929, ch. 136, § 1, p. 225; I.C.A., § 39-1522.

40-1613. 1911, ch. 55, § 17, p. 129; reen. C.L. 62:17; am. 1919, ch. 12, § 1, p. 74; C.S., § 1509; I.C.A., § 39-1523.

40-1614 to 40-1617. 1911, ch. 55, §§ 18 to 21, p. 129; reen. C.L. 62:18 to 62:21; C.S., §§ 1510 to 1513; I.C.A., §§ 39-1524 to 39-1527; am. 1963, ch. 218, § 1, p. 627.

40-1618. 1911, ch. 55, § 22, p. 130; reen. C.L. 62:22; C.S., § 1514; am. 1925, ch. 98, § 1, p. 144; I.C.A., § 39-1528; am. 1941, ch. 64, § 1, p. 124; am. 1963, ch. 290, § 28, p. 757; am. 1975, ch. 112, § 1, p. 231; am. 1984, ch. 138, § 1, p. 327.

40-1619. 1911, ch. 55, § 23, p. 130; reen. C.L. 62:23; C.S., § 1515; I.C.A., § 39-1529.

40-1620. 1911, ch. 55, § 24, p. 130; reen. C.L. 62:24; C.S., § 1516; I.C.A., § 39-1530; am. 1980, ch. 61, § 7, p. 118; am. 1980, ch. 350, § 18, p. 887.

40-1621. 1911, ch. 55, § 25, p. 131; reen. C.L. 62:25; C.S., § 1517; I.C.A., § 39-1531; am. 1974, ch. 12, § 35, p. 61.

40-1622. 1911, ch. 55, § 26, p. 131; reen. C.L. 62:26; C.S., § 1518; I.C.A., § 39-1532; am. 1973, ch. 259, § 1, p. 511; am. 1977, ch. 91, § 1, p. 185.

40-1623 to 40-1628. 1911, ch. 55, §§ 27 to 32, p. 131; reen. C.L. 62:27 to 62:32; C.S., §§ 1519 to 1524; I.C.A., §§ 39-1533 to 39-1538.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 151.

§ 40-1602. Petition. — Whenever electors of a portion of the territory embraced in any existing highway district desire that their portion be detached from the highway district, a petition describing the territory by its boundaries, signed by not less than twenty-five (25) electors qualified to vote at a highway district election and residing in the territory sought to be detached shall be presented to the commissioners of the county where the greatest portion of the highway district is located.

History.

I.C., § 40-1602, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1602 was repealed. See Prior Laws, § 40-1601.

§ 40-1603. Order for hearing upon petition. — Immediately upon its next regular meeting or at a special meeting called for that purpose, the commissioners shall by order or resolution fix a time and place for a hearing of the petition, which time shall not be less than twenty-one (21) days from and after the date of the first publication of the notice of the petition and of the hearing.

History.

I.C., § 40-1603, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1603 was repealed. See Prior Laws, § 40-1601.

§ 40-1604. Notice of hearing and petition. — The commissioners shall require their clerk to have a notice published in accordance with the provisions of [section 40-206, Idaho Code](#), setting forth the fact that a petition has been filed with the commissioners. The notice shall state the name of the highway district from which territory is proposed to be detached; a concise general description of the territory so proposed to be detached and its boundaries; the current bonded and current warrant indebtedness of the district; a notice of the time and place when and where the petition will be heard by the commissioners; and notice that any elector qualified to vote at an election of the district may, prior to or at the time of the hearing, file with the clerk of the commissioners written objections to the proposed detachment of the territory.

History.

[I.C., § 40-1604](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1604 was repealed. See Prior Laws, § 40-1601.

§ 40-1605. Hearing — Order for election. — At the time and place specified in the notice, the commissioners shall proceed to consider the petition and all written objections filed with them and shall hear all persons in relation to it. Upon the conclusion of the hearing, which may be continued from day to day, if the commissioners shall determine that the detachment from the highway district of the territory described in the petition is practicable and to the best interests of the territory and of the highway district, they shall enter an order directing that the question of the detachment of the territory be submitted to the qualified electors of the district at an election to be held within the district on a date authorized in [section 34-106, Idaho Code](#), which is not less than thirty (30) days from and after the date of the order.

History.

[I.C., § 40-1605](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 86, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1605 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, substituted “held within the district on a date authorized in [section 34-106, Idaho Code](#), which is not less than thirty (30) days from and after the date of the order” for “held within the district at a date not less than thirty (30) nor more than sixty (60) days from and after the date of the order.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1605A. Appointment to fill vacancy. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-1605A, as added by 1982, ch. 269, § 1, p. 700, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-1606. Election officers and polling districts — Notice of election.

— The county clerk shall appoint judges for the election; the commissioners shall by order establish polling places; and the county clerk shall provide notice of the election in accordance with the provisions of [section 34-1406, Idaho Code](#). The notice shall state the date and purpose of the election, the boundaries of the territory proposed to be detached from the highway district, the places of holding the election, the various polling districts if the election is to be held in more than one (1) place, the qualifications required of voters, and the hours during which the polls shall be open.

History.

[I.C., § 40-1606](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 87, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1606 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, rewrote the first sentence to the extent a detailed comparison is impracticable and, in the last sentence, deleted “which shall be between the hours of 1:00 p.m. and 7:00 p.m.” from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1607. Election procedure. — The qualifications of voters at the elections, the conduct of elections, the counting of the votes, the return of the ballots, and the payment of expenses of the election shall be as prescribed in title 34, Idaho Code.

History.

I.C., § 40-1607, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 88, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1607 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, substituted “title 34, Idaho Code” for “sections 40-1808 through 40-1810, Idaho Code.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1608. Order declaring territory detached. — If upon the canvass of the returns of the election the commissioners shall find that a majority of the votes cast in the district are in favor of the detachment from the highway district of the territory embraced in the proposal for detachment, they shall immediately make and enter an order declaring that territory detached from the district to the extent and for the purposes set forth.

History.

I.C., § 40-1608, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1608 was repealed. See Prior Laws, § 40-1601.

§ 40-1609. Effect of detachment of territory — Apportionment of indebtedness. — The detachment of territory from the district shall be deemed to relate only to the operations of the district subsequent to the order of detachment. Territory detached and all taxable property in that territory shall be and remain liable for the proportionate share of all bonded, warrant, and other indebtedness incurred by the district prior to the time of detachment. The proportionate share of the indebtedness of the district incurred prior to the order of detachment to be borne by the detached territory is hereby established and shall be determined and computed as follows:

(1) The highway district commissioners shall, at the meeting at which an order of detachment is made, compute the total aggregate market value for assessment purposes of the property within the district for the preceding year, and shall separately compute the total aggregate market value for assessment purposes for the preceding year of all the property within the territory detached from the district.

(2) The highway district commissioners shall compute and determine as of the date of the order of detachment the cash and solvent credits owing to the district and the value of the highway equipment and other personal property owned by it at the time of the detachment of territory, all of which property shall be retained by the district.

(3) The proportion of the outstanding indebtedness of the district incurred prior to the withdrawal of territory for which the withdrawn territory shall be and remain liable is the proportion that the aggregate market value for assessment purposes of the property within the withdrawn territory bears to the market value for assessment purposes of the property within the entire highway district as shown by the assessment rolls of the preceding year, less credit for the proportionate share or interest of the withdrawn territory in the cash, solvent credits, and personal property of the district, that share being based upon the proportion that the market value for assessment purposes of the property within the detached territory for the preceding year bears to the market value for assessment purposes of the total property within the entire district for the year.

History.

I.C., § 40-1609, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES**Prior Laws.**

Former § 40-1609 was repealed. See Prior Laws, § 40-1601.

CASE NOTES

Cited City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1610. Detached territory subject to county levies. — After the detachment of any territory from a highway district the property within the detached portion shall be subject to taxation by the county for highway and other purposes to the same extent precisely as if it had never been included in the highway district.

History.

I.C., § 40-1610, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1610 was repealed. See Prior Laws, § 40-1601.

§ 40-1611. Validity of outstanding bonds and warrants not affected.

— Nothing in this chapter shall be construed as impairing the validity of any bonds or warrants of a highway district outstanding at the time of the detachment of any territory.

History.

I.C., § 40-1611, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1611 was repealed. See Prior Laws, § 40-1601.

CASE NOTES

Cited City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 72 P.3d 905 (2003).

Idaho Code § 40-1612, 40-1613

§ 40-1612, 40-1613. [Reserved.]

STATUTORY NOTES

Prior Laws.

Former §§ 40-1612 and 40-1613 were repealed. See Prior Laws, § 40-1601.

ANNEXATION

« Title 40 •, « Ch. 16 », • § 40-1614 »

Idaho Code § 40-1614

§ 40-1614. Territory disannexed from another county or adjacent to an existing highway district and within the county. — Any area not within a highway district, but within a territory previously detached from a county and annexed to another county, and adjacent to a highway district organized before annexation and situate wholly within the county to which the territory has been annexed, and any area not within a highway district, which is adjacent to an existing highway district and situate wholly within the county within which the highway is located, may be added to, and included in, the highway district upon the approval of its highway commissioners and the order of the commissioners of the county in which the highway district is situated.

History.

I.C., § 40-1614, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1614 was repealed. See Prior Laws, § 40-1601.

CASE NOTES

Cited *Floyd v. Bd. of Comm'rs*, 137 Idaho 718, 52 P.3d 863 (2002); *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, §§ 148, 149.

§ 40-1615. Petition for annexation. — (1) The proceedings for inclusion shall be initiated by petition of twenty per cent (20%) of the qualified electors in the area proposed to be annexed to and included within the highway district. The petition shall accurately describe the boundaries of the area to be annexed, and shall state the name and identify the highway district to which the annexation is sought, and shall be accompanied by a map showing and distinguishing the boundaries of the highway district and the boundaries of the area proposed to be annexed to the highway district.

(2) Proposals for the annexation of territory consisting entirely of public lands, or of a combination of public lands and privately held lands but which have no qualified electors to initiate a petition, may be initiated by petition of the highway commissioners of the district to which the proposed annexation is to be made.

History.

I.C., § 40-1615, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1615 was repealed. See Prior Laws, § 40-1601.

§ 40-1616. Required exhibits in connection with petition. — The petition, accompanied by a map and also by a certified copy of a resolution of the highway commissioners of the highway district approving and consenting to the inclusion and annexation shall be filed with the clerk of the commissioners.

History.

I.C., § 40-1616, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1616 was repealed. See Prior Laws, § 40-1601.

§ 40-1617. Hearing on petition — Notice. — Upon the filing of petitions, the commissioners shall fix a time for hearing the petition and shall cause a notice to be published in accordance with the provisions of [section 40-206, Idaho Code](#), and shall describe the area proposed to be annexed to the highway district.

History.

[I.C., § 40-1617](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1617 was repealed. See Prior Laws, § 40-1601.

§ 40-1618. Objections to petition — Hearing. — Any qualified elector in the area to be annexed, and any qualified elector of the highway district, may file objections to the petition and may be heard at the hearing. Objections must be filed prior to or at the time of the hearing.

History.

I.C., § 40-1618, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1618 was repealed. See Prior Laws, § 40-1601.

§ 40-1619. Approval or rejection of petition. — Upon the hearing of the petition the commissioners may approve or reject the petition. The commissioners, upon the approval of the highway commissioners, may modify the area described in the petition.

History.

I.C., § 40-1619, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1619 was repealed. See Prior Laws, § 40-1601.

§ 40-1620. Order of annexation. — If the commissioners shall find that the annexation by the highway district is for the best interests of the highway system in the county, then the commissioners shall order that the area, or any modifications of it made by the commissioners, shall be annexed to the highway district, and an order shall be entered in the minutes of the commissioners, and the area shall then constitute and be a part of the highway district.

History.

I.C., § 40-1620, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1620 was repealed. See Prior Laws, § 40-1601.

§ 40-1621. Filing of certified copies of order. — The commissioners shall cause one (1) certified copy of the order to be filed for record in the office of the county recorder of the county in which the highway district is situate, and shall transmit a certified copy of the order to the highway commissioners of the highway district to which the area is annexed.

History.

I.C., § 40-1621, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1621 was repealed. See Prior Laws, § 40-1601.

§ 40-1622. Effect of annexation. — The area annexed to the highway district shall be placed by the highway commissioners of the district into the subdistrict or subdistricts of the district as they shall determine and shall be subject to taxation for the payment of all of the outstanding obligations of the district existing at the time of annexation, and subject to taxation as all other lands of the district for the operation of the highway system of the district.

History.

I.C., § 40-1622, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1622 was repealed. See Prior Laws, § 40-1601.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1623. Contesting proceedings — Time limit. — After the order of annexation is made by the commissioners, the validity of the proceedings shall not be affected by any defect in the petition or in the number or qualification of its signers, and no action shall be commenced or maintained or defense made affecting the validity of the annexation after six (6) months from and after the making and entering of the order by the commissioners.

History.

I.C., § 40-1623, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1623 was repealed. See Prior Laws, § 40-1601.

§ 40-1624. Annexation of contiguous territory. — Additional territory adjoining a highway district and lying contiguous with and within one (1) or more counties may be added to and be included in the district, by the affirmative vote of a majority of the qualified electors of the additional territory voting on the question at an election held for that purpose, which vote shall be taken at an election on a date authorized in [section 34-106, Idaho Code](#). Additional territory shall not be annexed to or included in the district unless annexation and inclusion shall be first approved by the commissioners of the county in which the area proposed to be annexed is located if it shall be deemed to be in the best public interest, and by the highway district commissioners of the existing district by resolution, entered on their minutes prior to the election on the question of annexation.

History.

[I.C., § 40-1624](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 89, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1624 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, in the first sentence, substituted “which vote shall be taken at an election” for “which vote may be taken either at a general or a special election” and added “on a date authorized in [section 34-106, Idaho Code](#).”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1625. Election date where territory lies in more than one county.

— Where territory to be annexed lies in more than one (1) county the election shall be held on the same day as it is mutually determined by agreement between the commissioners of both counties concerned on a date authorized in [section 34-106, Idaho Code](#).

History.

[I.C., § 40-1625](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 90, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1625 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, added “on a date authorized in [section 34-106, Idaho Code](#).”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1626. Petition for election — Election. — The election shall be conducted in accordance with the general election laws of the state. A petition for the election shall be initiated by not less than twenty-five (25) property owners, or all property owners if there are less than twenty-five (25) in the proposed area to be annexed. The proposed area to be annexed shall be set forth with clarity as to be specifically identified by a map of the area. The petition upon being signed shall be submitted to the commissioners of the highway district and to the commissioners concerned. The petition shall, within thirty (30) days after presentment, be either approved or rejected by the recorded motion of the commissioners in their minutes. Upon the petition being approved by the commissioners of the county in which the territory or a part is situated and the commissioners of the highway district, a certified copy of the petition, together with a certified copy of the resolution of the highway commissioners approving the petition for annexation and with the proposed election precinct boundaries and polling place, shall within ten (10) days be transmitted by the highway commissioners to the county clerk of the county or counties, in which the territory to be annexed lies. The commissioners in the county in which the territory lies shall then within sixty (60) days fix a time for the election on a date authorized in [section 34-106, Idaho Code](#). The commissioners and county clerk shall do all things necessary for the holding of an election in conformity with the general election laws of the state. Upon the election being had the result shall be canvassed, declared and the result certified by the commissioners.

History.

[I.C., § 40-1626](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 91, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1626 was repealed. See Prior Laws, § 40-1601.

Amendments.

The 2009 amendment, by ch. 341, in the section catchline, deleted “special” preceding “election”; in the seventh sentence, deleted “by giving notice as required for special elections by publication in accordance with the provisions of section 40-206” following “election” and inserted “on a date authorized in section 34-106”; and, in the next-to-last sentence, deleted “as shall be applicable” from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1627. Majority vote required approving annexation — Action of commissioners. — If, after canvassing the election, a majority of the qualified electors of the additional territory voting are in favor of the annexation, then the commissioners must order that the additional area shall be annexed to the highway district and an order shall be entered in their minutes, and the area shall then constitute and be a part of the highway district. Where the area to be annexed lies in a county other than the county in which the election was held, duplicate copies of the result of the election, copy of the canvass and order annexing the area to the highway district shall be immediately transmitted by the county clerk of the county in which the election was held to the county clerk of the county in which the highway district lies, and shall be immediately approved by the commissioners and recorded in their minutes.

History.

I.C., § 40-1627, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1627 was repealed. See Prior Laws, § 40-1601.

§ 40-1628. Certification by commissioners of order approving annexation. — The commissioners shall file one (1) certified copy of the order for record in the office of the county recorder of the county in which the highway district is situated, and shall transmit a certified copy of the order to the commissioners of the highway district of which the area is annexed.

History.

I.C., § 40-1628, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1628 was repealed. See Prior Laws, § 40-1601.

§ 40-1629. Taxation of annexed area for outstanding obligations. —
Upon annexation, the area next to the highway district shall be and become a part of it and shall be subject to taxation for the payment of all the outstanding obligations of the district existing at the time of annexation, and be subject to taxation as all other lands of the district for the operation of the highway system of the district.

History.

I.C., § 40-1629, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1629, which comprised S.L. 1911, ch. 55, § 33; am. 1912, ch. 7, § 1; C.L. 62:33; C.S., § 1525; I.C.A., § 39-1539, was repealed by S.L. 1949, ch. 39, § 1.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Idaho Code § 40-1630

§ 40-1630. Payment of costs of election. — The costs of the election shall be paid by the county or counties conducting the election.

History.

I.C., § 40-1630, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 92, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1630, which comprised 1911, ch. 55, § 34, p. 135; reen. C.L. 62:34; C.S., § 1526; I.C.A., § 39-1540, was repealed by S.L. 1985, ch. 253, § 1.

Amendments.

The 2009 amendment, by ch. 341, substituted “shall be paid by the county or counties conducting the election” for “shall be paid by the highway district annexing the territory.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1631, 40-1632. Employers liable for employee's poll tax — Deduction from salary or wages — Receipt — Exemptions from tax — Reimbursement of employer. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1631, 40-1632. 1911, ch. 55, §§ 35, 36, p. 135; reen. C.L. 62:35, 62:36; C.S., §§ 1527, 1528; am. 1927, ch. 16, p. 21; I.C.A., §§ 39-1541, 39-1542.

**§ 40-1633. Apportionment of county road and bridge taxes.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1911, ch. 55, § 37, p. 136; am. 1915, ch. 139, p. 296; reen. C.L. 62:37; C.S., § 1529; I.C.A., § 39-1543, was repealed by S.L. 1963, ch. 290, § 29.

§ 40-1634 — 40-1638. Apportionment in particular cases — Assessor to furnish assessed valuation — Board to make levy — Creation of local improvement districts — Limitation on levys — Penalties — Election to increase levy — Notice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1634, 40-1635. 1911, ch. 55, §§ 38, 39, p. 137; reen. C.L. 62:38, 62:39; C.S., §§ 1530, 1531; I.C.A., § 39-1544, 39-1545.

40-1636. I.C., § 40-1636, as added by 1972, ch. 19, § 1, p. 25.

40-1637, 40-1638. 1923, ch. 150, §§ 1, 2, p. 218; I.C.A., §§ 39-1547, 39-1548.

§ 40-1639. Apportionment of highway district taxes. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1911, ch. 55, § 41, p. 139; reen. C.L., 62:41; C.S., § 1534; I.C.A., § 39-1550; am. 1947, ch. 87, § 2, p. 147; am. 1961, ch. 34, § 1, p. 50, was repealed by S.L. 1963, ch. 290, § 29.

§ 40-1640 — 40-1678. Highway district taxes — Bonds of municipalities — Duties of county assessor — Collection of taxes — Liability of county officials — Payment of money to districts — Treasurer of district — Duties — Warrants — Notice — Interest — Bonds and funding bonds — Security — Special tax districts — Cities, towns and villages included in highway districts — Jurisdiction of districts — Disorganization of districts — Validation of irregularities — Budget — Fiscal year — Fund balances accumulation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985: 40-1640 to 40-1653. 1911, ch. 55, §§ 42, 44 to 46, 48 to 57, p. 121; reen. C.L. 62:42, 62:44 to 62:46, 62:48 to 62:57; C.S., §§ 1535, 1537 to 1539, 1541 to 1550; I.C.A., §§ 39-1551, 39-1553 to 39-1565; am. 1980, ch. 61, § 8, p. 118.

40-1654. 1911, ch. 55, § 58, p. 144; reen. C.L. 62:58; C.S., § 1551; am. 1927, ch. 262, § 16, p. 546; I.C.A., § 39-1566; am. 1933, ch. 131, § 3, p. 201; am. 1969, ch. 71, § 1, p. 221; 1980, ch. 350, § 19, p. 887.

40-1655. 1911, ch. 55, § 63, p. 121; compiled and reen. C.L. 62:63; C.S., § 1556; I.C.A., § 39-1568.

40-1656 to 40-1664. 1911, ch. 55, § 63a, 63d to 63k, as added by 1911, ch. 183, subd. 63a, 63d to 63k, p. 598; reen. C.L. 62:63a, 62:63d to 62:63k; C.S., §§ 1557, 1560 to 1567; I.C.A., §§ 39-1569, 39-1572 to 39-1579.

40-1665. 1911, ch. 55, § 64, p. 121; am. 1917, ch. 48, § 1, p. 108; reen. C.L. 62:64; C.S., § 1568; I.C.A., § 39-1580.

40-1666. 1911, ch. 55, § 65, p. 149; reen. C.L. 62:65; C.S., § 1569; I.C.A., § 39-1581.

40-1667. 1913, ch. 151, § 1, p. 520; compiled and reen. C.L. 62:66; C.S., § 1570; I.C.A., § 39-1582.

40-1668. 1913, ch. 151, § 2, p. 520; reen. C.L. 62:67; C.S., § 1571; I.C.A., § 39-1583.

40-1669. 1927, ch. 252, § 10, p. 418; I.C.A., § 39-1610.

40-1670. 1927, ch. 252, § 11, p. 418; I.C.A., § 39-1611.

40-1671. 1927, ch. 252, § 12, p. 418; I.C.A., § 39-1612.

40-1672. I.C., § 40-1672, as added by 1973, ch. 269, § 1, p. 564.

40-1673. I.C., § 40-1673, as added by 1973, ch. 269, § 2, p. 564.

40-1674. I.C., § 40-1674, as added by 1973, ch. 269, § 3, p. 564.

40-1675. I.C., § 40-1675, as added by 1973, ch. 269, § 4, p. 564.

40-1676. I.C., § 40-1676, as added by 1973, ch. 269, § 5, p. 564; am. 1977, ch. 91, § 2, p. 185.

40-1677. I.C., § 40-1677, as added by 1977, ch. 91, § 3, p. 185.

40-1678. I.C., § 40-1678, as added by 1982, ch. 195, § 1, p. 522.

Chapter 17

COUNTY HIGHWAY REORGANIZATION

Sec.

40-1701. Legislative intent.

40-1702. Countywide election to adopt method of secondary highway administration — Procedure.

40-1703. Subsequent elections.

40-1704. Districts to be economically workable.

40-1705. Organization of countywide highway districts — Highway district commissioners — Appointment — Terms — Election.

40-1706. Adjustment of highway district borders — Notice — Hearing — Decision of commissioners — Appeal.

40-1707, 40-1708. [Repealed.]

40-1709. Inventory and financial statement of dissolved district — Disposition of property and obligations of dissolved district and county road departments.

40-1710. Apportionment of area of dissolved district in county where several highway districts exist. [Repealed.]

40-1711. Decennial county elections for new type of highway administration — Exceptions. [Repealed.]

40-1712. Highway study commission — Establishment — Membership.

40-1713. Meeting of highway study commission — Selection of option for submission — Election — Implementation of option — Retention of existing system.

40-1714. Expenses of election.

§ 40-1701. Legislative intent. — It is the intent of the legislature in amending this chapter to declare that it is necessary in the further promotion, regulation, control and administration of the secondary highways within the state of Idaho for the electorate to adopt a secondary highway system at the county level and for the elimination of impractical and uneconomical units and still maintain the element of home rule and administration of secondary highways within the various county and highway district systems exclusive of the state highway system.

History.

I.C., § 40-1701, as added by 1998, ch. 415, § 1, p. 1307.

STATUTORY NOTES

Prior Laws.

Another former §§ 40-1701 to 40-1713, which comprised C.S., §§ 1503A to 1503M, as added by 1931, ch. 33, § 1, p. 69; I.C.A., §§ 39-1701 to 39-1713; am. 1941, ch. 55, §§ 2, 3, p. 113, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Compiler's Notes.

Former § 40-1701 was amended and redesignated as § 40-1702 by § 2 of S.L. 1998, ch. 415.

CASE NOTES

Cited Daugharty v. Post Falls Hwy. Dist., 134 Idaho 731, 9 P.3d 534 (2000).

§ 40-1702. Countywide election to adopt method of secondary highway administration — Procedure. — (1) In any county where there is a petition for an election to adopt a new method of administration of the secondary highways in the county, the procedure outlined in this chapter shall be followed.

(2) The petitions signed by five percent (5%) of the qualified voters or twenty-five (25) persons, whichever is greater, of each highway district and the area served by a county road department, where applicable, within the county may be filed with the county clerk and upon the commissioners finding that the petitions have been properly signed and filed, cause the formation of a local highway study commission as provided in [section 40-1712, Idaho Code](#), prior to submitting the matter to vote of the entire county at the next general election, providing that the next general election is not less than one hundred eighty (180) days from the filing of the petitions. All of the laws of the state relating to holding of elections at the county level shall apply to the holding of the election and the notice of election shall notify the electors of the issues to be voted upon at the election, and publication of a notice shall be in accordance with the provisions of title 34, Idaho Code. Public hearings within the county shall be held, as deemed advisable, by the highway study commission.

(3) The election shall be conducted in such a manner that the vote is canvassed separately in each of the existing highway districts and the area served by a county road department, where applicable.

(4) The county clerk in the notice of election shall indicate polling places as designated by the county commissioners for each precinct and/or district, as appropriate, to adequately provide for the vote at the election. Every qualified elector of the county may vote.

(5) The vote shall be canvassed by the county board of canvassers within the time specified in chapter 12, title 34, Idaho Code.

History.

[I.C., § 40-1701](#), as added by 1985, ch. 253, § 2, p. 586; am. and redesign. 1998, ch. 415, § 2, p. 1307; am. 2009, ch. 341, § 93, p. 993.

STATUTORY NOTES

Prior Laws.

Another former § 40-1702 was repealed. See Prior Laws, § 40-1701.

Amendments.

The 2009 amendment, by ch. 341, in the next-to-last sentence in subsection (2), deleted “except as may be specifically modified in this chapter” following the first occurrence of “election” and substituted “and” for “In addition to other requirements of law” and “title 34, Idaho Code” for “[section 40-206, Idaho Code](#)”; in subsection (4), substituted “county clerk” for “commissioners” and “shall indicate polling places as designated by the county commissioners for each precinct” for “shall designate polling places in each precinct”; and rewrote subsection (5), which formerly read: “The vote shall be canvassed by the commissioners within five (5) days of the election.”

Compiler’s Notes.

This section was formerly compiled as § 40-1701.

Former § 40-1702 was amended and redesignated as § 40-1703 by § 3 of S.L. 1998, ch. 415.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1703. Subsequent elections. — Another election may be similarly called and held by the submission of petitions as provided by [section 40-1702, Idaho Code](#), and any subsequent election shall not be held more often than six (6) years after the holding of any election submitting this question to the vote of the county.

History.

[I.C., § 40-1702](#), as added by 1985, ch. 253, § 2, p. 586; am. and redesign. 1998, ch. 415, § 3, p. 1307.

STATUTORY NOTES

Prior Laws.

Former § 40-1703 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section was formerly compiled as § 40-1702.

Another former § 40-1703 was amended and redesignated as § 40-1704 by § 4 of S.L. 1998, ch. 415.

§ 40-1704. Districts to be economically workable. — Highway districts organized or consolidated from existing highway districts and areas served by a county road department, where applicable, under the provisions of this chapter shall consist of areas having sufficient mileage, equipment, resources, valuation and budget to be considered economically workable. The county commissioners shall organize the district(s) with regard to geographical locations for the most efficient operation.

History.

I.C., § 40-1703, as added by 1985, ch. 253, § 2, p. 586; am. and redesign. 1998, ch. 415, § 4, p. 1307.

STATUTORY NOTES

Prior Laws.

Another former § 40-1704 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section was formerly compiled as § 40-1703.

Former § 40-1704 was amended and redesignated as § 40-1705 by § 5 of S.L. 1998, ch. 415.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

§ 40-1705. Organization of countywide highway districts — Highway district commissioners — Appointment — Terms — Election. — (1) Countywide highway districts may be organized under the laws applicable to highway districts and for county highway districts, new highway districts, consolidated or enlarged highway districts, and the number of highway commissioners to be elected shall be three (3). The formation of new districts shall be effected by the commissioners of the county so affected within sixty (60) days of the reorganization election, and upon the determination that a county highway system shall be reorganized as a countywide highway district, new highway districts, consolidation, enlargement or other modification, the original highway district commissioners shall, within seventy (70) days of the election, be appointed by the governor. A new highway district shall be divided by the commissioners into three (3) subdistricts as nearly equal in mileage, market value for assessment purposes, and population as practicable under the circumstances, for the purpose of determining each highway commissioner's district, and each commissioner for a highway district shall represent and be elected or appointed from the district in which he resides.

(2) Upon appointment, qualification and acceptance of duties as highway commissioners, those originally appointed shall, by lot, determine two (2) of the original appointed highway commissioners who shall serve for terms of original appointment for two (2) years, or until the next regular election for highway commissioners. The remaining highway commissioner shall serve for a period of four (4) years, or until the next succeeding election for highway commissioners. Thereafter, the highway commissioners elected shall be elected for four (4) year terms as their terms expire, thus providing a continuation in office of highway district commissioners, and providing for the staggered election of the commissioners in subsequent elections.

(3) Laws applicable to the election of highway commissioners shall apply to the conduct of highway district elections throughout the county, and the election for highway commissioners shall be on a nonpartisan basis.

(4) Where a countywide highway district, new highway district, or consolidated or enlarged district results from an election under this chapter,

it shall be the duty of the governor, in the appointment of the original highway commissioners for the county, where there shall have been in existence at the time of the creation of any highway districts within the limits of the county to appoint whenever practicable, the existing highway commissioners as they shall qualify by residence in the territorial limits of the districts of the newly created highway district as a highway commissioner of the newly created highway district system. County commissioners, city mayors and city council members shall not be eligible to hold office as a highway district commissioner.

History.

I.C., § 40-1704, as added by 1985, ch. 253, § 2, p. 586; am. and redesign. 1998, ch. 415, § 5, p. 1307.

STATUTORY NOTES

Prior Laws.

Another former § 40-1705 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section was formerly compiled as § 40-1704.

Former § 40-1705 was amended and redesignated as § 40-1706 by § 6 of S.L. 1998, ch. 415.

§ 40-1706. Adjustment of highway district borders — Notice — Hearing — Decision of commissioners — Appeal. — In areas where more than one (1) highway district exists and the highway districts were organized under the provisions of this chapter, the commissioners shall have the duty and obligation from time to time as shall be practical and for the best interests of the countywide administration of the secondary highway systems, to adjust the borders of the highway districts coexisting in the county as shall most equitably and economically permit the administration, operation and construction of the secondary highway system within the county. Notice of a proposal to change the boundaries of the highway districts within the county shall be given by the commissioners through the county clerk to the districts affected and notice shall be published in accordance with the provisions of [section 40-206, Idaho Code](#). At the hearing any person objecting may be heard in opposition, and upon the closing of the hearing, the commissioners shall within ten (10) days after the hearing, notify the districts affected of their decision, and any district aggrieved by the decision shall have the right through its highway commissioners to appeal the decision directly to the district court of the county in which the district lies. Matters referred to the district court on appeal shall be submitted by petition for hearing within twenty (20) days of the announcement of the decision of the commissioners and the matter disposed of by the district court by reversal or approval. Failure to diligently prosecute the matter before the district court shall justify the district court in dismissing the appeal without hearing.

History.

[I.C., § 40-1705](#), as added by 1985, ch. 253, § 2, p. 586; am. and redesign. 1998, ch. 415, § 6, p. 1307.

STATUTORY NOTES

Prior Laws.

Former § 40-1706, which comprised [I.C., § 40-1706](#), as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1998, ch. 415, § 7, effective July 1, 1998.

Another former § 40-1706 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section was formerly compiled as § 40-1705.

§ 40-1707, 40-1708. Dissolution of district in existence at time of option election — Payment of expenses of local option elections. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 40-1707 and 40-1708 were repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

These sections, which comprised I.C., §§ 40-1707 and 40-1708, as added by 1985, ch. 253, § 2, p. 586, were repealed by S.L. 1998, ch. 415, § 7, effective July 1, 1998.

§ 40-1709. Inventory and financial statement of dissolved district — Disposition of property and obligations of dissolved district and county road departments. — (1) Upon an election being held under the provisions of this chapter and an option being chosen, all affected highway districts and the county road department, where applicable, shall prepare and file with the county commissioners an inventory of all machinery, buildings, lands and property of every kind and nature and financial statement not later than ten (10) days subsequent to the canvass of the election.

(2) Title to all machinery, buildings, lands and property of every kind and nature, belonging to each affected highway jurisdiction shall immediately upon the dissolution of the district and county road department without further conveyance, be vested in the county commissioners as custodians and be delivered to the succeeding operational unit as soon as practicable. The succeeding unit shall be liable for any and all unliquidated obligations of the dissolved highway districts and county road department.

History.

I.C., § 40-1709, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 415, § 8, p. 1307.

STATUTORY NOTES

Prior Laws.

Former § 40-1709 was repealed. See Prior Laws, § 40-1701.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

Decisions Under Prior Law Application.

A former similar section regarding the disposition of property of a dissolved district was not intended to embrace county owned property previously used by county road departments, and, accordingly, a highway district did not by operation of law receive title to land and a building

owned by the county and previously used by the county road department.
Worley Hwy. Dist. v. Kootenai County, 98 Idaho 925, 576 P.2d 206 (1978).

§ 40-1710. Apportionment of area of dissolved district in county where several highway districts exist. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-1710 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section, which comprised I.C., § 40-1710, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1998, ch. 415, § 7, effective July 1, 1998.

§ 40-1711. Decennial county elections for new type of highway administration — Exceptions. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-1711 was repealed. See Prior Laws, § 40-1701.

Compiler's Notes.

This section, which comprised I.C., § 40-1711, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1986, ch. 98, § 1.

§ 40-1712. Highway study commission — Establishment — Membership. — In each county required to conduct an election under the provisions of [section 40-1702, Idaho Code](#), there shall be established a local highway study commission. The local highway study commission in each county shall be composed as follows:

(1) One (1) member shall be appointed by the highway district commissioners of each highway district within the county; (2) The mayor of the city with the largest population within the county shall appoint one (1) member; (3) The chairman of the county commissioners shall appoint a county commissioner as one (1) member and that member will serve as chairman of the commission.

History.

[I.C., § 40-1712](#), as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 415, § 9, p. 1307.

STATUTORY NOTES

Prior Laws.

Former § 40-1712 was repealed. See Prior Laws, § 40-1701.

§ 40-1713. Meeting of highway study commission — Selection of option for submission — Election — Implementation of option — Retention of existing system. — (1) The highway study commission shall meet at the county courthouse, at the call of the chairman, no later than one hundred fifty (150) days prior to the election called for by this chapter. At that meeting, or at any other meetings as may be necessary to make the decision, the commission shall analyze the options for administration for the county's secondary highways.

(2) The options for the administration of the county's secondary highways are as follows:

(a) To establish a countywide highway system for the administration of the secondary highway system of the entire county, exclusive of those highways and streets within cities, with functioning street departments, by county commissioners;

(b) To establish a single countywide highway district for the administration of the secondary highway system of the entire county, exclusive of those highways and streets within cities with functioning street departments, independent of the administration of the county commissioners; and

(c) For the division of the county into not more than four (4) highway districts for the administration of the secondary highways of the county, exclusive of those highways and streets within cities, with functioning street departments, independent of the county commissioners.

(3) The highway study commission will, at least ninety (90) days prior to the election, select one (1) of those options for submission to the electorate at the election. The question to be submitted to the electorate shall be substantially as follows:

For the purpose of administering the secondary highway system of
County, shall the county ?
Yes =qr No

(4) If a majority of the voters casting votes in each of the highway districts and the area served by the county road department, where

applicable, approve the proposal submitted, the commissioners shall implement the option selected as provided by this chapter.

(5) If the proposal is defeated by the voters casting votes in each of the highway districts and the area served by the county road department, where applicable, the county shall retain its current system for the administration of its secondary highways.

History.

I.C., § 40-1713, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 415, § 10, p. 1307.

STATUTORY NOTES

Prior Laws.

Former § 40-1713 was repealed. See Prior Laws, § 40-1701.

§ 40-1714. Expenses of election. — In all counties where elections are held under the provisions of this chapter, commissioners shall pay expenses of the elections from the election fund of the county.

History.

I.C., § 40-1714, as added by 1998, ch. 415, § 11, p. 1307; am. 2009, ch. 341, § 94, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1714, which comprised C.S., § 1503-N, as added by 1931, ch. 33, § 1, p. 69; I.C.A., § 39-1714, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Amendments.

The 2009 amendment, by ch. 341, in the section catchline, deleted “Proration to systems — Appeals” from the end; and, in text, substituted “election fund” for “general fund” and deleted the last two sentences, which dealt with proration of expenses and appeals procedure.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Chapter 18

DISSOLUTION OF HIGHWAY DISTRICTS

Sec.

- 40-1801. Districts subject to dissolution.
- 40-1802. Petition for dissolution — Contents.
- 40-1803. Order for hearing upon petition.
- 40-1804. Notice of petition and hearing.
- 40-1805. Hearing — Order for election.
- 40-1806. Election officers — Notice of election.
- 40-1807. Qualifications of voters.
- 40-1808. Conduct of elections.
- 40-1809. Counting votes — Canvass — Order of dissolution.
- 40-1810. Expenses of dissolution — How borne and paid.
- 40-1811. Disposition of surplus funds and property of dissolved system or district.
- 40-1812. Provision for payment of current claims.
- 40-1813. Dissolution of district situated in two or more counties.
- 40-1814. Districts in two or more counties — Provision for payment of indebtedness upon dissolution.
- 40-1815. Jurisdiction of property of dissolved district situated in two or more counties.
- 40-1816. Control of bridges and highways of dissolved district.
- 40-1817. Limitation on new proceedings for dissolution.
- 40-1818. Validity of outstanding obligations.
- 40-1819. Acts and proceedings established or commenced before chapter takes effect not affected.

40-1820. Continuance in service of employees of dissolved system or district.

40-1821. No district dissolved until succeeding operational unit in existence.

40-1822. Indebtedness prior to consolidation — Liability of property in former districts. [Repealed.]

§ 40-1801. Districts subject to dissolution. — Any highway district of the state, except a single countywide highway district formed pursuant to chapter 14, title 40, Idaho Code, may be dissolved as provided in this chapter. Sections 40-1806 through 40-1821, Idaho Code, shall apply to any election and process for dissolution of a single countywide highway district.

History.

I.C., § 40-1801, as added by 1985, ch. 253, § 2, p. 586; am. 2004, ch. 361, § 2, p. 1081.

STATUTORY NOTES

Prior Laws.

Former §§ 40-1801 to 40-1821, which comprised 1931, ch. 224, §§ 1-21, p. 449; I.C.A., §§ 39-1801 to 39-1821, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, § 151.

§ 40-1802. Petition for dissolution — Contents. — All proceedings for the dissolution of highway districts shall be initiated by a petition of twenty-five (25) or more qualified electors of the district, addressed to the commissioners of the county in which the district is situate, and which shall concisely state the grounds or reasons for the dissolution and contain a request for a hearing of the petition.

History.

I.C., § 40-1802, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1802 was repealed. See Prior Laws, § 40-1801.

§ 40-1803. Order for hearing upon petition. — The petition shall be filed with the clerk of the commissioners and at its next regular meeting, or at any special meeting called for that purpose, and the commissioners shall by an order fix a time and place for the hearing of the petition, which time shall not be less than twenty-one (21) days from and after the date of the first publication of the notice of the petition and hearing.

History.

I.C., § 40-1803, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1803 was repealed. See Prior Laws, § 40-1801.

§ 40-1804. Notice of petition and hearing. — The commissioners shall require their clerk to cause a notice to be published in accordance with the provisions of [section 40-206, Idaho Code](#), setting forth that a petition has been filed, the prayer of the petition and notice of the time and place when and where the petition will be heard, and further notice that any elector of the district may, prior to or at the time of the hearing, file with the clerk written objections to the proposed dissolution.

History.

[I.C., § 40-1804](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1804 was repealed. See Prior Laws, § 40-1801.

§ 40-1805. Hearing — Order for election. — At the time and place specified in the notice, the commissioners shall proceed to consider the petition and all written objections to it, and shall hear all persons in relation to it, and shall hear or take testimony as may be offered or as they desire. Upon the conclusion of the hearing which may be continued from day to day, if the commissioners determine that the district ought to be dissolved and that the dissolution would be to the best interest of the district, it shall enter an order directing that the question of dissolution of the district be submitted to the qualified electors of the district at an election to be held on the date authorized in [section 34-106, Idaho Code](#), which is not less than thirty (30) days from and after the order.

History.

[I.C., § 40-1805](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 95, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1805 was repealed. See Prior Laws, § 40-1801.

Amendments.

The 2009 amendment, by ch. 341, inserted “on a date authorized in [section 34-106, Idaho Code](#), which is” and deleted “nor more than sixty (60)” following “thirty (30).”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CASE NOTES

[Best interest of district.](#)

[Standing.](#)

Best Interest of District.

County commissioners did not err in holding a highway district should dissolve because the “best interest of district” was considered something more than just the corporate entity and meant taking into account consideration of geographical area and the interests of persons the district was intended to serve; however, the city could not be the highway district’s successor. *Sandpoint Indep. Highway Dist. v. Bd. of County Comm’rs*, 138 Idaho 887, 71 P.3d 1034 (2003).

Standing.

Highway district clearly had standing to appeal a board of county commissioner’s decision to dissolve it, the possible effect upon the highway district was apparent in that it could have been destroyed. *Sandpoint Indep. Highway Dist. v. Bd. of County Comm’rs*, 138 Idaho 887, 71 P.3d 1034 (2003).

§ 40-1806. Election officers — Notice of election. — The county clerk shall appoint judges for the election, to be chosen from the electors of the district and the county commissioners shall by order establish polling places. The county clerk shall publish notice of the election in accordance with the provisions of [section 34-1406, Idaho Code](#). The notice shall state the purpose of the election and the polling places.

History.

[I.C., § 40-1806](#), as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 96, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1806 was repealed. See Prior Laws, § 40-1801.

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1807. Qualifications of voters. — Any person residing in the district possessing the qualifications required by law for a voter at any general election of the state shall be entitled to vote in the election.

History.

I.C., § 40-1807, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1807 was repealed. See Prior Laws, § 40-1801.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Elections, § 275 et seq.

§ 40-1808. Conduct of elections. — (1) The polls in all elections shall be presided over by the judges and clerks appointed by the county clerk.

(2) All elections shall be conducted in accordance with the provisions of title 34, Idaho Code.

History.

I.C., § 40-1808, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 97, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1808 was repealed. See Prior Laws, § 40-1801.

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1809. Counting votes — Canvass — Order of dissolution. — Immediately following the close of the polls at the time specified in the notices of election the votes shall be counted in accordance with the provisions of title 34, Idaho Code. The board of county commissioners shall canvass the returns as provided in chapter 12, title 34, Idaho Code, and in the event a majority of the votes cast in the district are in favor of dissolution, the county commissioners shall immediately make and enter an order declaring the district dissolved.

History.

I.C., § 40-1809, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 98, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1809 was repealed. See Prior Laws, § 40-1801.

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, § 356 et seq.

§ 40-1810. Expenses of dissolution — How borne and paid. — All expenses of proceedings to dissolve highway districts, including the posting and publication of notices of hearings on the petitions and of the election, the printing of ballots and compensation of judges and clerks of election, shall be borne by the county.

History.

I.C., § 40-1810, as added by 1985, ch. 253, § 2, p. 586; am. 2009, ch. 341, § 99, p. 993.

STATUTORY NOTES

Prior Laws.

Former § 40-1810 was repealed. See Prior Laws, § 40-1801.

Amendments.

The 2009 amendment, by ch. 341, substituted “highway district” for “county” and deleted the last sentence, which dealt with expenses incurred with the defeating of a proposal to dissolve.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 40-1811. Disposition of surplus funds and property of dissolved system or district. — (1) After final payment of all expenses of proceedings in relation to dissolution and of all legal claims, liabilities, bonded and other indebtedness of the dissolved highway district, and after liquidation and winding up of the affairs of the district, all surplus moneys of the dissolved highway district remaining in the special fund of the dissolved district shall immediately be delivered to the treasurer of the succeeding operational unit. Title to all machinery, buildings, lands, and property of every kind and nature belonging to the dissolved system or district shall immediately upon entry of the order of dissolution, and without further conveyance, be vested in the succeeding operational unit.

(2) No city whose incorporated limits lie wholly or partially within the boundaries of a dissolved highway district shall be entitled to receive any share of the moneys of the dissolved highway district.

History.

I.C., § 40-1811, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1811 was repealed. See Prior Laws, § 40-1801.

CASE NOTES

Successor Entity.

This section does not prescribe where the money would go if not to the successor but a plain reading of the statute indicates that a city cannot be the successor to a highway district. *Sandpoint Indep. Highway Dist. v. Bd. of County Comm'rs*, 138 Idaho 887, 71 P.3d 1034 (2003).

§ 40-1812. Provision for payment of current claims. — As a part of the proceedings of and order for dissolution of a district, the commissioners shall make a determination, so nearly as may be done, of the total indebtedness of the dissolved district, including bonded, funded bond, and all warrant indebtedness, both as to registered and floating warrants, and current indebtedness of, or claims against, the district. They shall likewise determine the amount of funds on hand belonging to the dissolved district, and shall estimate the revenue to be derived from sale of district property, from uncollected taxes or assessments levied or assessed in the district, and the amount of highway users' funds as the highway district would be entitled to receive from the county in which the district is situated had the district not been dissolved. From that determination, the commissioners shall compute the probable amount of money which may be applied in payment of current indebtedness of the dissolved district and shall order and provide for the manner in which current claims against the district shall be presented to the commissioners for allowance and payment by warrants drawn against the special fund of the district in the county treasury.

History.

I.C., § 40-1812, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1812 was repealed. See Prior Laws, § 40-1801.

§ 40-1813. Dissolution of district situated in two or more counties. —
When any highway district is to be dissolved, situate in two (2) or more counties, the commissioners of the county whose county seat is situated most nearly to the geographical center of the district, shall have jurisdiction of the dissolution of the district and the same procedure, including notices and elections, shall be followed as provided in this chapter and chapter 17 of this title, for dissolution of highway districts situated in one (1) county. Meetings shall be had at the county seat of the county having jurisdiction of the dissolution of the highway district before a joint session of the commissioners from all the counties affected by the dissolution. The commissioners of the counties affected shall cause to be made and entered an order for notice, election, and for the dissolution and winding up of the affairs of the highway district and specifying when the same shall be dissolved, and the succeeding operational unit, if any.

History.

I.C., § 40-1813, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1813 was repealed. See Prior Laws, § 40-1801.

§ 40-1814. Districts in two or more counties — Provision for payment of indebtedness upon dissolution. — The commissioners of the county in which the petitions for dissolution are filed, shall determine the indebtedness of the entire district and shall provide for the payment of the indebtedness out of district funds on hand, or to be raised by special levies, levied by the county, and shall be certified to the clerk of the commissioners of each of the counties in which is situated any part of the dissolved district, and an ad valorem tax shall be levied and imposed by each of the counties upon property of the district as may be within the county. The tax shall be collected, and not less than quarterly, be remitted to the treasurer of the county where the petitions are filed, to be applied in payment of the indebtedness of the dissolved district.

History.

I.C., § 40-1814, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1814 was repealed. See Prior Laws, § 40-1801.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1815. Jurisdiction of property of dissolved district situated in two or more counties. — The succeeding operational unit of the county in which the proceedings for the dissolution of highway districts, situated in two (2) or more counties are had, or the commissioners of the county or counties wherein the district was situate shall, after the order of dissolution, have exclusive jurisdiction over all of the property, business and affairs of the dissolved district, whether situate in the county or not, including the power to issue funding bonds against the whole territory of the district for the payment of funding of bonds, warrants, and for other indebtedness of the district when funds for payment cannot be secured by current taxation.

History.

I.C., § 40-1815, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1815 was repealed. See Prior Laws, § 40-1801.

§ 40-1816. Control of bridges and highways of dissolved district. —
From and after the entry of the order for dissolution of any highway district, the commissioners of the county where the district was situate, or the succeeding operational unit, shall have the same control over all bridges and highways of the district situate in the county, as was or is vested in the commissioners in other territory of the county, including the power to levy ad valorem taxes upon the property situate therein for general highway and bridge purposes.

History.

I.C., § 40-1816, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1816 was repealed. See Prior Laws, § 40-1801.

§ 40-1817. Limitation on new proceedings for dissolution. — When any proceedings for dissolution of any highway district shall have failed of adoption, either on account of order of the commissioners or at election, no new proceedings for dissolution of the district shall be initiated less than one (1) year thereafter.

History.

I.C., § 40-1817, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1817 was repealed. See Prior Laws, § 40-1801.

§ 40-1818. Validity of outstanding obligations. — Nothing in this chapter shall be construed as impairing the validity of any outstanding bonds or warrants of a dissolved system or district.

History.

I.C., § 40-1818, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1818 was repealed. See Prior Laws, § 40-1801.

CASE NOTES

Cited *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

§ 40-1819. Acts and proceedings established or commenced before chapter takes effect not affected. — This chapter shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before July 1, 1985, but those actions or proceedings may be prosecuted and continued by the county, district or city.

History.

I.C., § 40-1819, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1819 was repealed. See Prior Laws, § 40-1801.

§ 40-1820. Continuance in service of employees of dissolved system or district. — All persons in the employ of any dissolved city highway system or highway district may be continued in service so far as their services may be required by the succeeding operational unit.

History.

I.C., § 40-1820, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1820 was repealed. See Prior Laws, § 40-1801.

§ 40-1821. No district dissolved until succeeding operational unit in existence. — No highway districts dissolved under the terms and provisions of this chapter shall be deemed to have been dissolved and shall not cease to operate and perform their duties and obligations until there shall have been organized and existing a succeeding operational unit.

History.

I.C., § 40-1821, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1821 was repealed. See Prior Laws, § 40-1801.

§ 40-1822. Indebtedness prior to consolidation — Liability of property in former districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1931, ch. 224, § 22, p. 449; I.C.A., § 39-1822, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Chapter 19

BEAUTIFICATION OF HIGHWAYS

Sec.

40-1901. Legislative intent and policy — Tourist related advertising devices.

40-1902. Erecting and maintaining advertising displays.

40-1903. County zoning ordinances.

40-1904. Private and public notices.

40-1905. Licenses required — Application.

40-1906. Permits for placing advertising display — Application.

40-1907. Permits and licenses — Issuance — Fees.

40-1908. Bond of out-of-state licensee or permittee.

40-1909. Identification of advertising structures — Placing structure without permit plate — Violation.

40-1910. Location of displays.

40-1910A. Removal of off-premises outdoor advertising prohibited without compensation.

40-1911. General prohibitions.

40-1912. Industrial or commercial zones.

40-1913. Removal of displays.

40-1914. Local ordinances.

40-1915. Nuisances.

40-1916. Penalty — Remedies cumulative.

40-1917, 40-1918. [Reserved.]

40-1919. Junkyards as public nuisances.

40-1920. License — Renewal — Fee.

40-1921. Requirements for license.

40-1922. Dump permits — Renewal — Fee — Screening by owner.

40-1923, 40-1924. [Reserved.]

40-1925. Enforcement — Revocation of license or permit — Notice — Hearing.

40-1926. Violations as public nuisances — Injunctions — Venue.

§ 40-1901. Legislative intent and policy — Tourist related advertising devices. — (1) The state of Idaho herewith finds and determines that the removal of tourist related signs which were lawfully created under state law in force at the time of their erection which do not conform to the requirements of [section 131\(o\), title 23, United States Code](#), which provide directional information about goods and services in the interest of the traveling public, and which were in existence on May 6, 1976, may work a substantial economic hardship in defined areas within the state.

(2) The legislature further finds and declares that outdoor advertising is a form of commercial use of the public highway and regulation and removal of outdoor advertising is a highway purpose. In order to provide for maximum visibility along highways and to permit unobstructed view of connecting highways and intersections, to prevent the distraction of operators of motor vehicles, to prevent confusion with respect to traffic lights, signs or signals, or otherwise interfere with the effectiveness of traffic regulations, to preserve and enhance the natural scenic beauty of areas traversed by interstate and primary highways, to protect the public investment in highways, to promote the recreational value of public travel, to conform to the expressed intent of congress to control the erection and maintenance of outdoor advertising displays, and to promote the maximum safety, comfort and well-being, of the users of highways, the legislature finds and declares it to be necessary in the public interest to regulate the erection and maintenance of outdoor advertising structures, signs and displays and the business or occupation, in areas adjacent to interstate and primary highways, in accordance with the terms of this chapter and regulations promulgated by the board.

History.

[I.C., § 40-1901](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former §§ 40-1901 to 40-1907, which comprised 1927, ch. 5, §§ 1 to 7, p. 9; I.C.A., §§ 39-1901 to 39-1907; am. 1980, ch. 350, § 20, p. 887, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-1902. Erecting and maintaining advertising displays. — The provisions of this chapter and the regulation of erecting and maintaining advertising displays, insofar as the regulation may affect erecting and maintaining advertising displays visible from the interstate or primary system of highways of this state, shall be exclusive of all regulations whether enacted by a law of this state or by a political subdivision [of] the state.

History.

I.C., § 40-1902, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1902 was repealed. See Prior Laws, § 40-1901.

Compiler's Notes.

The bracketed insertion was added by the compiler to supply obviously missing text.

§ 40-1903. County zoning ordinances. — It is the intention of the legislature to occupy the whole field of regulation by this chapter, except that nothing in this chapter prohibits enforcement of any or all of its provisions by persons designated to act by appropriate ordinances duly adopted by any county of this state, nor does this chapter prohibit the passage by any county of reasonable land use or zoning regulations affecting the placing of advertising displays or the placement and operation of junkyards, in accordance with the provisions of chapter 65, title 67, Idaho Code.

History.

I.C., § 40-1903, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 259, § 1, p. 861.

STATUTORY NOTES

Prior Laws.

Former § 40-1903 was repealed. See Prior Laws, § 40-1901.

Effective Dates.

Section 2 of S.L. 1998, ch. 259 declared an emergency. Approved March 23, 1998.

§ 40-1904. Private and public notices. — Nothing contained in this chapter applies to any advertising display used exclusively for:

(1) Directional and other official signs and notices erected or maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in state or federal law, for the purpose of carrying out an official duty or responsibility; (2) Structures, signs and displays advertising the sale or lease of property upon which they are located; and (3) Structures, signs and displays advertising activities conducted on the property on which they are located.

History.

I.C., § 40-1904, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1904 was repealed. See Prior Laws, § 40-1901.

§ 40-1905. Licenses required — Application. — (1) No person shall engage in or carry on the business or occupation of outdoor advertising without first having paid the license fee provided by this chapter.

(2) An application for a license shall be made by each outdoor advertising business on a form furnished by the department.

History.

I.C., § 40-1905, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1905 was repealed. See Prior Laws, § 40-1901.

§ 40-1906. Permits for placing advertising display — Application. —

(1) No person shall place any advertising display within the area affected by the provisions of this chapter in this state without first having secured a written permit from the department.

(2) A separate application for a permit shall be made for each separate outdoor advertising structure, sign or display on a form furnished by the department, which application shall contain information as the department may require. Each application shall be accompanied by the written consent of the owner or tenant of the real property upon which the structure, sign or display is to be erected or maintained, unless the consent shall have previously been filed with the department. An application shall be made for a permit to maintain an existing outdoor advertising structure, sign or display or to renew a permit.

History.

I.C., § 40-1906, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-1906 was repealed. See Prior Laws, § 40-1901.

§ 40-1907. Permits and licenses — Issuance — Fees. — (1) The department, in accordance with the provisions of this chapter, shall issue or renew permits and licenses for a period of at least one (1) year for the erection or maintenance of all type of outdoor advertising structures, signs or displays. No permit or license shall be issued for the erection or construction of any sign which would be in violation of local law or ordinance at the time application is filed, and further provided that no permit shall be withheld or denied for a nonconforming sign which is to be removed pursuant to the terms of this chapter by reason of the sign being located upon land to which the state or the department has acquired a restrictive covenant regarding the erection of signs if the sign was in existence prior to October 22, 1965.

(2) The license fee for an original license, and for each annual renewal, is payable annually in advance, as follows:

(a) Fifty dollars (\$50.00) for persons owning one or more but fewer than one hundred (100) signs subject to this chapter.

(b) One hundred dollars (\$100) for persons owning more than one hundred (100) signs subject to this chapter.

(3) Licenses granted shall expire each year on December 31 and shall not be pro rated. Application for renewal of licenses shall be made not less than thirty (30) days prior to the date of expiration.

(4) A permit fee of ten dollars (\$10.00) shall accompany each original permit application. An annual permit fee of three dollars (\$3.00) shall accompany each renewal permit application.

(5) The issuance of a permit and payment of a permit fee for the placing of an advertising structure includes the right to change the advertising copy thereon without obtaining any additional permit for the remainder of the calendar year in which the permit is issued and without the payment of any additional permit fee.

(6) Any license or permit issued pursuant to this chapter may be transferred to any person who acquires the business as a successor of the person for whom the license or permit was issued.

History.

I.C., § 40-1907, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES**Prior Laws.**

Former § 40-1907 was repealed. See Prior Laws, § 40-1901.

§ 40-1908. Bond of out-of-state licensee or permittee. — When an application for a license or permit or for renewal is made by a nonresident or by a foreign corporation engaged in the business of outdoor advertising, the department in its discretion, as a condition to the issuance of a license or permit or renewal, may require the corporation to deposit with the department a bond in an amount and with surety to be approved by the department, to secure the corporation's compliance with the provisions of this chapter.

History.

I.C., § 40-1908, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1909. Identification of advertising structures — Placing structure without permit plate — Violation. — (1) The department shall require that each outdoor advertising structure, sign or display shall bear an identification tag or plate to be issued by the department, and if erected or maintained by an outdoor advertising business that it shall also bear his name.

(2) No person shall place any advertising structure, sign or display unless there is securely fastened upon the front a permit plate of the character specified in subsection (1) above. Placing an advertising display without having affixed a permit plate is prima facie evidence that the advertising display has been placed and is being maintained in violation of this chapter, and any such display shall be subject to removal.

History.

I.C., § 40-1909, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1910. Location of displays. — No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

- (1) Within the right-of-way of any highway;
- (2) Visible from any interstate or primary highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if intended or likely to be construed as giving warnings of traffic;
- (3) Within any stream or drainage canal or below the flood water level of any stream or drainage canal where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage canal or against the supports of the highway structure;
- (4) Not maintained in a safe condition;
- (5) Visible from any interstate or primary highway and displaying any red, blue or blinking intermittent light likely to be mistaken for a warning or danger signal;
- (6) Illuminated with such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent interstate or primary highways;
- (7) Purported to direct the movement of traffic;
- (8) Painted, affixed or attached to any natural feature as more particularly prohibited by [section 18-7017, Idaho Code](#);
- (9) Hinder the clear, unobstructed view of approaching or merging traffic, nor obscure from view any traffic sign or other official sign;
- (10) Located as to obscure the view of any connecting highway or intersection; and
- (11) Not clear or in good repair.

History.

I.C., § 40-1910, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1910A. Removal of off-premises outdoor advertising prohibited without compensation. — (1) No governmental entity, including the state, or any municipality, county or other political subdivision shall remove or cause to be removed any legally placed off-premises outdoor advertising without paying compensation in cash or other method of payment mutually agreed upon, to the owner of the off-premises outdoor advertising based upon the fair market value of the off-premises outdoor advertising removed or proposed to be removed.

(2) As used in this section:

(a) “Off-premises outdoor advertising” means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform and which is situated in order to be visible from any highway, or other traveled way and which is located on property which is separate from and not adjoining the premises or property on which the advertised activity is carried out.

(b) “Fair market value of the off-premises outdoor advertising” means the value of the off-premises outdoor advertising which shall include consideration of the income derived from the same and which shall otherwise be determined in the same manner as provided in [section 7-711, Idaho Code](#).

(c) “Legally placed” means, in reference to off-premises outdoor advertising, off-premises outdoor advertising which was erected in compliance with state laws and local ordinances, in effect at the time of erection or which was subsequently brought into compliance with state laws and local ordinances, except that the term does not apply to any off-premises outdoor advertising whose use is modified after erection in a manner which causes it to become illegal. Nothing herein shall require the payment of compensation for the removal by a governmental entity of any off-premises or other outdoor advertising which is, without authorization, erected or located in or upon a public right-of-way unless the same was legally placed thereon prior to the premises becoming a public right-of-way.

(d) “Relocation” means removal of off-premises outdoor advertising and construction within the same market area of new off-premises outdoor advertising to substitute for the off-premises outdoor advertising removed.

(3) It is a policy of this state to encourage governmental entities and owners of off-premises outdoor advertising to enter into relocation agreements in lieu and instead of paying the compensation provided herein, to continue development in a planned manner without expenditures of public funds while allowing continued maintenance of private investment and a medium of public communication. The state, cities, counties and all other political subdivisions are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the off-premises outdoor advertising owner and the governmental entity and to adopt rules, ordinances or resolutions providing for relocation of off-premises outdoor advertising, provided that nothing herein shall require compensation other than the actual cost of relocation unless the said owner is reasonably unable to acquire an alternate permissible location of comparable cost and value within the same market area. Notwithstanding anything to the contrary herein, this section shall not be construed to prohibit a governmental entity from entering into any relocation agreement upon such terms as shall be otherwise lawful.

(4) The requirement by a local governmental entity that legally placed off-premises advertising be removed as a condition or prerequisite for the issuance or continued effectiveness of a permit, license or other approval for any use, structure, development or activity other than off-premises outdoor advertising constitutes a compelled removal requiring compensation under this section unless the permit, license or approval is requested for the construction of a building or structure which cannot be built without physically removing the off-premises outdoor advertising.

History.

I.C., § 40-1910A, as added by 1997, ch. 156, § 1, p. 451.

§ 40-1911. General prohibitions. — Notwithstanding any other provision of this chapter, no advertising display shall be erected or maintained within six hundred sixty (660) feet from the edge of the right-of-way of the interstate and primary system of highways within this state except the following:

(1) Directional or other official signs or notices that are required or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Displays advertising activities conducted on the property upon which they are located, provided that not more than one (1) such sign, visible to traffic proceeding in any one direction, and advertising activities being conducted upon the real property where the sign is located may be permitted more than fifty (50) feet from the advertising activity;

(4) Displays located within areas zoned industrial, business or commercial under authority of state law, or in unzoned industrial or commercial areas as determined by the department;

(5) Displays erected or maintained by the department on the right-of-way pursuant to regulation of the department designed to give information in the specific interest of the traveling public. The department, by and through its director, may, upon receipt of a certified copy of an ordinance from a board of county commissioners, or a city council, accompanied by all economic studies required by federal rules and regulations showing that the removal of tourist-related advertising activities would cause an economic hardship on a defined area, forward the ordinance to the secretary of the United States department of transportation for inclusion as a defined hardship area, qualifying for exemption pursuant to [section 131\(o\), title 23, United States Code](#). The ordinance and economic studies shall show that (1) the tourist-related advertising devices provide directional information about goods and services in the interest of the traveling public, and (2) that the removal of

the specific directional advertising displays will work a substantial economic hardship in the defined area;

(6) Signs lawfully in existence on October 22, 1965, determined to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this chapter; and

(7) On or after July 1, 1985, no advertising structure or display shall be erected or maintained in this state, other than those allowed pursuant to subparagraphs (2), (3) and (4) of this section, which are located beyond six hundred sixty (660) feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected for the purpose of the message being read from that main traveled way of the system.

History.

I.C., § 40-1911, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Selective Enforcement.

Where the department of transportation did not selectively enforce this section and § 40-1912, it did not violate plaintiff's constitutional right to equal protection under the law, and selective enforcement, without more, is not a violation of either the Idaho or the U.S. Constitutions. *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 25 P.3d 117 (2001).

§ 40-1912. Industrial or commercial zones. — (1) The provisions of [section 40-1911, Idaho Code](#), shall not apply to those segments of the interstate and primary system of highways which traverse and abut on commercial, business or industrial zones within the boundaries of incorporated cities, wherein the use of real property adjacent to and abutting on the interstate and primary system of highways is subject to city or county regulation or control, or which traverse and abut on other areas where the land use is clearly established by state law or county zoning regulation, as industrial, business or commercial, or which are located within areas adjacent to the interstate and primary system of highways which are in unzoned commercial or industrial areas as determined by the department from actual land uses. The department shall determine the size, lighting and spacing of signs in the zoned and unzoned industrial, business or commercial areas.

(2) For the purpose of this chapter, areas abutting interstate and primary highways of this state which are zoned commercial or industrial by counties and cities shall be valid as commercial or industrial zones only as to the portions actually used for commerce or industrial purposes and the land along the highway in urban areas for a distance of six hundred (600) feet immediately abutting to the area of the use, and does not include areas so zoned in anticipation of such uses at some uncertain future date, nor does it include areas zoned for the primary purpose of allowing advertising structures. All signs located within an unzoned area shall become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of six (6) months.

History.

[I.C., § 40-1912](#), as added by 1985, ch. 253, § 2, p. 586.

§ 40-1913. Removal of displays. — Any outdoor advertising which is not in compliance with the provisions of this chapter may be removed by the department. Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under state law, but the department shall not be required to purchase or remove any advertising displays as required under this chapter, until matching federal aid funds are available for the purchase or removal by the federal government.

History.

I.C., § 40-1913, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Damages.

Plaintiff was not entitled to damages because it had entered into a stipulation of settlement which provided that plaintiff was not entitled to compensation if the terms of the agreement were breached. *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 25 P.3d 117 (2001).

§ 40-1914. Local ordinances. — The provisions of this chapter shall not be construed as permitting a person to place or maintain in existence on or adjacent to any interstate or primary highway, any outdoor advertising prohibited by law or by an ordinance of a city or county.

History.

I.C., § 40-1914, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1915. Nuisances. — All advertising displays which are placed or which exist in violation of the provisions of this chapter are public nuisances and may be removed by any public employee as is further provided in this chapter.

History.

I.C., § 40-1915, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1916. Penalty — Remedies cumulative. — (1) Any person who erects an advertising display, or who, as principal, agent or employee, causes or orders an advertising display to be erected, or one who permits an advertising display to be erected or maintained on land owned or leased by that person, in violation of the provisions of this chapter, shall be guilty of a misdemeanor.

(2) The remedies provided in this chapter for the removal of illegal advertising displays are cumulative and not exclusive of any other remedy provided by law.

History.

I.C., § 40-1916, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 40-1917, 40-1918. [Reserved.]

§ 40-1919. Junkyards as public nuisances. — For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is declared by the legislature of the state of Idaho to be in the public interest and for a highway purpose to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to highways on interstate and primary systems within the state. The legislature finds and declares that junkyards that are not in compliance with the provisions of this chapter are public nuisances.

History.

I.C., § 40-1919, as added by 1985, ch. 253, § 2, p. 586.

§ 40-1920. License — Renewal — Fee. — No person shall operate, establish, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any highway on the interstate or primary system without obtaining a license from the board. The license and each renewal shall be issued on a calendar year basis and shall expire on December 31 following the date of issuance. A fee of twenty-five dollars (\$25.00) shall be charged for each original license or renewal license which shall be deposited in the state treasury in the highway distribution account.

History.

I.C., § 40-1920, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

§ 40-1921. Requirements for license. — Licenses shall be granted for the operation of those junkyards within one thousand (1,000) feet of the nearest edge of the right-of-way of any highway on the interstate or primary system meeting the following requirements:

(1) Are screened by natural objects, plantings, fences or other appropriate means so as to render them invisible from the traveled way of the highway involved; or

(2) Located within areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the board; or

(3) Are not visible from the main traveled way of the highway involved; or

(4) Are to be screened by the board as provided in [section 40-313\(4\), Idaho Code](#); or

(5) Are to be relocated, removed or disposed of by the board as provided in [section 40-313\(4\), Idaho Code](#).

History.

[I.C., § 40-1921](#), as added by 1985, ch. 253, § 2, p. 586.

§ 40-1922. Dump permits — Renewal — Fee — Screening by owner.

— No person shall operate, establish, or maintain a dump, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any highway on the interstate or primary system without obtaining a permit from the board. The permit and each renewal shall be issued on a calendar year basis and shall expire on the 31st day of December following the date of issuance. A fee of fifteen dollars (\$15.00) shall be charged for each original permit or renewal permit which shall be deposited in the state treasury to the credit of the highway distribution account.

History.

I.C., § 40-1922, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Highway distribution account, § 40-701.

§ 40-1923, 40-1924. [Reserved.]

§ 40-1925. Enforcement — Revocation of license or permit — Notice — Hearing. — (1) The department or board may revoke any license or permit for the failure to comply with the provisions of this chapter and may remove and destroy any advertising display placed or maintained in violation of this chapter after written order posted on the structure or sign and copies served by certified mail upon both the owner of the display and the owner of the land upon which it is situate. The order shall be signed by the district engineer of the department in the applicable district. The parties shall have thirty (30) days within which to appeal the order to the board under the provisions of chapter 52, title 67, Idaho Code.

(2) Notwithstanding any other provision of this chapter, the department or any of its authorized employees may summarily and without notice remove and destroy any advertising display placed in violation of this chapter which is temporary in nature because of the materials of which it is constructed or because of the nature of the copy on it.

(3) Proceedings for review of any action taken by the department pursuant to this section shall be instituted under the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 40-1925, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Jurisdiction.

The transportation department had subject matter jurisdiction through the exercise of the power granted to it pursuant to this section, and because the Idaho transportation board has been given broad authority by the Idaho legislature to regulate and enforce the erection and maintenance of

advertising signs. *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 25 P.3d 117 (2001).

§ 40-1926. Violations as public nuisances — Injunctions — Venue. —
All violations of this chapter are hereby declared to be public nuisances. The board may apply to the district court of the county in which the unlawful junkyard or dump is located for an injunction prohibiting further operation of any junkyard or dump in violation of this chapter.

History.

I.C., § 40-1926, as added by 1985, ch. 253, § 2, p. 586.

Chapter 20

HIGHWAY RELOCATION ASSISTANCE

Sec.

40-2001. Relocation aid for persons displaced by public programs — Legislative finding.

40-2002. Relocation advisory assistance.

40-2003. Local relocation advisory assistance offices.

40-2004. Relocation expense — Compensation options — Limit of compensation for business or farm relocations.

40-2005. Purchase assistance to relocating owner-occupant — Lease or down payment assistance to relocating tenant.

40-2006. Housing replacement as last resort.

40-2007. Compensation for miscellaneous expenses.

40-2008. Computation of replacement housing payment during condemnation proceedings — Adjustment after judgment.

40-2009. Relocation payments not income.

40-2010. Review of determinations.

40-2011. Eminent domain damages unaffected.

40-2012. Federal uniform relocation assistance act.

40-2013. Costs and attorney's fees.

§ 40-2001. Relocation aid for persons displaced by public programs — Legislative finding. — The legislature finds and declares that the prompt and equitable relocation and reestablishment of persons, families, businesses, farmers, and nonprofit organizations displaced as a result of any state or local governmental program or project is a necessary purpose, is a cost of those programs and projects and is a public purpose. In order to insure that individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole the legislature declares that relocation payments and relocation advisory assistance shall be provided to all persons so displaced in accordance with the terms and provisions of this chapter and rules promulgated by the board. The legislature finds and declares that rent supplement or purchase assistance payments to tenants and relocation payments to owner-occupants, businesses, and farmers in accordance with the provisions of this chapter are a public purpose and are necessary to enable all displaced persons to obtain decent, safe, and sanitary dwellings. The legislature further declares the provisions of this chapter may be applicable to all programs.

History.

I.C., § 40-2001, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 192, § 1, p. 472.

STATUTORY NOTES

Prior Laws.

Former §§ 40-2001 to 40-2020, which comprised 1931, ch. 95, §§ 1 to 9, p. 162; I.C.A., §§ 39-2001 to 39-2020; am. 1939, ch. 23, § 1, p. 54; 1957, ch. 24, § 1, p. 30, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Effective Dates.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

§ 40-2002. Relocation advisory assistance. — Any agency is authorized, as a part of the cost of any program or project, to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project. If any agency determines that any person occupying property immediately adjacent to the real property acquired has been caused substantial economic injury because of the acquisition, it shall offer him relocation advisory services.

History.

I.C., § 40-2002, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 192, § 2, p. 472.

STATUTORY NOTES

Prior Laws.

Former § 40-2002 was repealed. See Prior Laws, § 40-2001.

Effective Dates.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

§ 40-2003. Local relocation advisory assistance offices. — Any agency may, as a part of the cost of any public program or project, establish a local relocation advisory assistance office or agency to assist in obtaining relocation facilities for individuals, families and businesses which must relocate because of the acquisition of right-of-way for any project.

History.

I.C., § 40-2003, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2003 was repealed. See Prior Laws, § 40-2001.

§ 40-2004. Relocation expense — Compensation options — Limit of compensation for business or farm relocations. — (1) As a part of the cost of any public program or project, any agency using any funds for public purposes shall compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for any actual direct losses of tangible personal property as the result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the agency, and for actual reasonable expenses in searching for a replacement business or farm. However, the compensation authorized by this section for actual and reasonable moving expenses, actual direct losses of tangible personal property, and expenses in searching for a replacement farm or business shall be limited to relocating a displaced person, family, business or farm operation within a reasonable distance from the location previously occupied and from which the displaced person has been required to move.

(2) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section shall receive a moving expense allowance, determined according to regulations and schedules established by the agency, not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(3) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section, shall receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment shall not be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). In the case of a business, no payment shall be made under this subsection unless the agency is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired which is engaged in the same or similar

business. In addition to the other requirements of this chapter, to be eligible for the payment authorized by this subsection the business or farm operation must make its financial statements, accounting records, and state income tax returns available to the agency for audit for confidential use in determining the payment or payments authorized by this subsection. Such financial statements, accounting records and state income tax returns shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

(4) If any agency determines that property, contiguous with property acquired, owned or occupied by an individual, family, business or farm operation, has been damaged as the result of a public program or project, it shall offer the individual, family, business or farm operation the same compensation as it might offer to a displaced person under subsection (1), (2) or (3) of this section and under sections 40-2005 and 40-2007, Idaho Code.

History.

I.C., § 40-2004, as added by 1985, ch. 253, § 2, p. 586; am. 1990, ch. 213, § 51, p. 480; am. 2000, ch. 192, § 3, p. 472; am. 2015, ch. 141, § 104, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 40-2004 was repealed. See Prior Laws, § 40-2001.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the last sentence of subsection (3).

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

§ 40-2005. Purchase assistance to relocating owner-occupant — Lease or down payment assistance to relocating tenant. — (1) In addition to the payments authorized by [section 40-2004, Idaho Code](#), an agency shall make a payment to the owner of a dwelling, provided the dwelling has been owned and occupied by the owner for at least one hundred eighty (180) days prior to the first written offer for the acquisition of the property. The payment shall not exceed fifteen thousand dollars (\$15,000) and shall be the amount, which, when added to the acquisition payment, equals the reasonable cost required for a comparable dwelling determined in accordance with standards established by the agency to be suitable to accommodate the displaced owner. The payment shall be made only to a displaced owner who purchases and occupies a dwelling that meets standards established by the agency, not later than the end of a one (1) year period beginning on the date on which he received final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Payment under this subsection will include an amount which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. This amount will be paid only if the dwelling acquired by the agency was encumbered by a mortgage which was a valid lien on the dwelling for not less than one hundred eighty (180) days prior to the first written offer for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted current value. The discounted rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. This amount shall also include reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but shall not include prepaid expenses.

(2) In addition to the payments authorized by [section 40-2004, Idaho Code](#), any agency shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (1) of this section, which dwelling was actually and lawfully occupied by the individual or family for at least ninety (90) days prior to the first written offer for the acquisition of the property. The payment, not to exceed four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable the individual or family to lease or rent for a period not to exceed four (4) years, or to make a down payment, including reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling of standards adequate to accommodate the individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount exceeds two thousand dollars (\$2,000) the person must equally match any payment in excess of two thousand dollars (\$2,000), in making the down payment.

History.

[I.C., § 40-2005](#), as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 192, § 4, p. 472.

STATUTORY NOTES

Prior Laws.

Former § 40-2005 was repealed. See Prior Laws, § 40-2001.

Effective Dates.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

§ 40-2006. Housing replacement as last resort. — (1) If any federally-assisted program or project construction cannot commence because comparable replacement sale or rental housing is not available, and the agency determines that housing cannot otherwise be made available, it may take action as is necessary or appropriate to provide housing by use of funds authorized for the project.

(2) No displaced person shall be required to move from his dwelling on account of any federally-assisted program or project, unless the agency is satisfied that replacement housing is available to the person, within a reasonable period of time and at rents or prices within the financial means of the families and individuals displaced, and reasonably accessible to their places of employment.

History.

I.C., § 40-2006, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2006 was repealed. See Prior Laws, § 40-2001.

§ 40-2007. Compensation for miscellaneous expenses. — In addition to amounts authorized by this chapter, any agency as a part of the cost of any public program or project, shall reimburse the owner of real property acquired for a project for reasonable and necessary expenses incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying the property; (2) Penalty costs for prepayment of any mortgage entered into in good faith encumbering the real property if the mortgage is on record or has been filed for record under applicable state law on the date of final approval by the agency of the location of the project; and (3) The pro rata share or portion of ad valorem taxes paid which are allocable to a period subsequent to the date of vesting of title in the state or the effective date of possession of the real property by the agency, whichever is earlier.

History.

I.C., § 40-2007, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 192, § 5, p. 472.

STATUTORY NOTES

Prior Laws.

Former § 40-2007 was repealed. See Prior Laws, § 40-2001.

Effective Dates.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

§ 40-2008. Computation of replacement housing payment during condemnation proceedings — Adjustment after judgment. — In the event an acquisition payment to an owner-occupant for a dwelling cannot be finally determined because condemnation proceedings may become necessary or are pending against the property, the replacement housing payment authorized by [section 40-2005\(1\), Idaho Code](#), shall be made and computed as though the maximum offer of the state or agency for the property is the actual acquisition payment. In the event the final award and judgment rendered in the condemnation proceedings exceeds the state's highest offer, any difference between the offer and the judgment shall be deducted from the replacement housing payment, but in no event shall the judgment be reduced by more than the amount of the replacement housing payment.

History.

[I.C., § 40-2008](#), as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2008 was repealed. See Prior Laws, § 40-2001.

§ 40-2009. Relocation payments not income. — No payment received under this chapter shall be considered as income for the purposes of the state personal income tax law or state corporation tax law, nor shall the payments be considered as income or resources to any recipient of public assistance and the payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under the state public assistance laws, nor shall the payments be considered as income or resources for the purpose of determining the eligibility or the extent of eligibility of any persons for public assistance.

History.

I.C., § 40-2009, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2009 was repealed. See Prior Laws, § 40-2001.

§ 40-2010. Review of determinations. — Any displaced person aggrieved by a determination as to the eligibility for a payment authorized by this chapter, or the amount of the payment, may have his application reviewed. Proceedings for review of any action taken by the agency pursuant to this section shall be instituted under the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 40-2010, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2010 was repealed. See Prior Laws, § 40-2001.

§ 40-2011. Eminent domain damages unaffected. — Nothing contained in this chapter shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence under the laws of the state of Idaho on July 1, 1985.

History.

I.C., § 40-2011, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2011 was repealed. See Prior Laws, § 40-2001.

§ 40-2012. Federal uniform relocation assistance act. — (1) Regardless of any of the other provisions of title 40, **chapter 20, Idaho Code**, when any department, agency or instrumentality of the state, or any county, municipality, or other political subdivision, or any other public or private entity undertakes any project or activity subject to the provisions of the federal uniform relocation assistance and real property acquisition policies act of 1970, as amended, public laws 91-646, and 100-17, title IV (hereinafter the federal uniform relocation act) which results in the acquisition of real property or in any person or persons being displaced from their homes, businesses, or farms, such state department, agency or instrumentality, county, municipality or other political subdivision, or other public or private entity is hereby authorized to provide relocation assistance, and to make relocation payments to such displaced person and to do such other acts and follow such procedures and practices as may be necessary to comply with the provisions of the federal uniform relocation act.

(2) Any payment made or to be made under the authority granted herein shall be for compensating or reimbursing the displaced person or owner of real property in accordance with the requirements of the federal uniform relocation act and such payments shall not for any purpose be deemed or considered compensation for real property acquired or compensation for damages to remaining property.

(3) The Idaho transportation department is authorized to issue such regulations and procedures as it determines to be necessary or appropriate to carry out the provisions of this chapter.

History.

I.C., § 40-2012, as added by 1988, ch. 136, § 1, p. 243.

STATUTORY NOTES

Prior Laws.

Former § 40-2012 was repealed. See Prior Laws, § 40-2001.

Federal References.

The federal uniform relocation assistance and real property acquisition policies act of 1970, referred to in this section, is compiled as [42 USCS § 4601 et seq.](#)

§ 40-2013. Costs and attorney's fees. — Any moving and relocation costs which will accrue as a result of a condemnation undertaken pursuant to chapter 7, title 7, Idaho Code, or pursuant to this chapter, shall be paid by the condemner as required by law. If such costs are not paid by the condemner, the owner of the property shall be awarded attorney's fees and costs incurred to recover the same.

History.

I.C., § 40-2013, as added by 2000, ch. 192, § 6, p. 472.

STATUTORY NOTES

Prior Laws.

Former § 40-2013 was repealed. See Prior Laws, § 40-2001.

Effective Dates.

Section 7 of S.L. 2000, ch. 192 declared an emergency. Approved April 4, 2000.

Chapter 21

REGIONAL PUBLIC TRANSPORTATION AUTHORITY

Sec.

40-2101. Short title.

40-2102. Policy of state.

40-2103. Definitions.

40-2104. Purpose of authority.

40-2105. Creation of authority — Voter approval — Name.

40-2106. Authority board.

40-2107. Board procedures.

40-2108. Corporate powers of an authority.

40-2109. Powers and duties of board.

40-2110. Contributions.

40-2111. Issuance of revenue bonds.

40-2112. Budget.

40-2113. Exemption from taxation.

40-2114. Severability.

§ 40-2101. Short title. — This chapter may be known and cited as the “Regional Public Transportation Authority Act.”

History.

I.C., § 40-2101, as added by 1994, ch. 327, § 1, p. 1052.

STATUTORY NOTES

Prior Laws.

Former title 40, chapter 21, consisting of §§ 40-2101 to 40-2138, which comprised I.C.A., §§ 39-2021 to 39-2032, as added by 1943, ch. 120, § 1, p. 230; 1949, ch. 123, §§ 1 to 11, p. 217; am. 1951, ch. 37, § 1, p. 48; 1959, ch. 122, §§ 1 to 7, p. 266; 1978, ch. 281, §§ 1, 2, p. 683, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Compiler’s Notes.

Both S.L. 1994, ch. 327 and S.L. 1994, ch. 331 enacted a chapter 21 in title 40. The provisions enacted by S.L. 1994, ch. 33 were redesignated, through the use of brackets, as chapter 22 of title 40. That redesignation was made permanent by S.L. 2005, ch. 25.

§ 40-2102. Policy of state. — It is hereby recognized by the legislature of the state of Idaho that, as the population and economy of areas of this state grow, the total needs for mobility of commerce and people cannot be met solely with highway and road systems; that motor vehicle congestion and air quality problems result which may adversely affect health and safety; that there are a variety of persons who are elderly, who have disabilities, who live in rural areas or who otherwise require public transportation services for their general welfare; and that prosperous commerce and industry depend upon effective regional systems of transportation. It is therefore declared to be the policy of the state to maintain a state commitment to improve public transportation; to increase the use of transportation alternatives to single occupancy motor vehicles; to promote cooperative agreements among governmental entities in providing public transportation services; and to attain greater efficiency in the use of public transportation funds in a manner consistent with the needs, health, safety and general welfare of the people of Idaho.

History.

I.C., § 40-2102, as added by 1994, ch. 327, § 1, p. 1052.

STATUTORY NOTES

Prior Laws.

Former § 40-2102 was repealed. See Prior Laws, § 40-2101.

§ 40-2103. Definitions. — (1) “Authority” means the regional public transportation authority.

(2) “Board” means the governing body of the regional public transportation authority.

(3) “City” means an incorporated city.

(4) “Commission” means the board of county commissioners or the board of commissioners of a single county-wide highway district.

(5) “Public transportation service” means, without limitation, fixed transit routes; scheduled or unscheduled transit service provided by motor vehicle, bus, rail, van, aerial tramway and other modes of public conveyance; paratransit service for the elderly and disabled; shuttle and commuter service between cities, counties, health care facilities, employment centers, educational institutions or park-and-ride locations; subscription van and car-pooling service; and transportation services unique to social service programs.

(6) “Region” means the geographical area encompassed by an authority which may include all of a county or contiguous parts of one (1) or more counties.

History.

I.C., § 40-2103, as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 1, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2103 was repealed. See Prior Laws, § 40-2101.

§ 40-2104. Purpose of authority. — The purpose of an authority created pursuant to this chapter is to establish a single governmental agency oriented entirely toward public transportation needs within each county or region that deems such an agency necessary. This authority, a political subdivision of the state of Idaho, is under the supervision of and directly responsible to local governments, and shall provide public transportation services, encourage private transportation programs and coordinate both public and private transportation programs, services and support functions.

History.

I.C., § 40-2104, as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 2, p. 1177; am. 2003, ch. 210, § 1, p. 555.

STATUTORY NOTES

Prior Laws.

Former § 40-2104 was repealed. See Prior Laws, § 40-2104.

§ 40-2105. Creation of authority — Voter approval — Name. —
Authorities may be established in one (1) of the following ways:

(1)(a) County-wide authorities. A city or commission by resolution may call for an election to establish a regional public transportation authority in the county to carry out the purposes of this chapter. The entire geographical area of the county must be included within the jurisdiction of an authority created pursuant to this subsection.

(b) The ballot question shall seek voter approval of the establishment of the authority.

(2)(a) Regional authorities. A city or commission may adopt a resolution proposing to establish an authority which contains contiguous parts of one (1) or more counties. The resolutions shall include a legal description of a contiguous region encompassed by the proposed authority and specifically name each city and county wholly or partially included therein. Boundaries of the proposed authority shall conform insofar as possible to existing boundaries dividing voting precincts.

(b) A certified copy of the resolution shall be transmitted by registered mail to the chief elected official of each city and county wholly or partially included in the proposed region.

(c) Each city and county shall, by resolution, either approve without alteration or reject the resolution proposing the establishment of an authority and transmit a certified copy to the clerk or recorder of the initiating city or commission. If a city or county fails to act upon the resolution proposing the establishment of an authority within sixty (60) days after receipt of the certified copy, the city or county is deemed to have rejected the resolution.

(d) If the city councils and county commissions of all cities and counties wholly or partially included in the proposed region approve the resolution proposing the establishment of an authority, the question shall be submitted for voter approval. The ballot question shall generally describe the area which is proposed to be included in the authority, identify each city and county which will be located either wholly or

partially within the authority and shall seek voter approval of the establishment of the authority.

(3) Authorization to establish a regional public transportation authority may be made only by the registered voters of the region at an election held at least sixty (60) days after the final resolution is adopted and in conformity with [section 34-106, Idaho Code](#). A simple majority of votes cast on the question shall be necessary to establish the authority.

(4) An authority created pursuant to this act shall be named the “..... (name of authority) REGIONAL PUBLIC TRANSPORTATION AUTHORITY.” In the event two (2) or more authorities should by cooperative agreement merge their services the name may be appropriately changed by a majority vote of the board of each authority.

History.

[I.C., § 40-2105](#), as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 3, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2105 was repealed. See Prior Laws, § 40-2101.

Compiler’s Notes.

The term “this act” in subsection (4) refers to S.L. 1994, ch. 327, which is codified as §§ 40-2101 to 40-2114.

§ 40-2106. Authority board. — (1) Each authority shall have a governing board appointed by and serving at the pleasure of the governing bodies of counties, incorporated cities and highway districts located wholly or partially within the authority.

(2) The board initially shall be composed of not less than five (5) members selected as follows: two (2) members representing each board of county commissioners; one (1) member representing highway district commissions wholly or partially contained within the region; two (2) members representing each city with a population of twenty-five thousand (25,000) or more; and one (1) member representing each city with a population of less than twenty-five thousand (25,000). Board composition subsequently may be modified pursuant to subsection (7) of this section.

(3) Board members shall be appointed by resolution of the appointing agency and shall serve at the pleasure of the appointing agency. Board members may be elected officials of the appointing agency or they may be representatives empowered by the agency to act in its best interests. The highway district board member shall be appointed by the board of commissioners of the highway district in counties with a single county-wide highway district or, in counties with more than one (1) highway district, by the board of county commissioners in consultation with all highway district commissions wholly or partially contained within the region.

(4) Ex officio members may be appointed to the authority board by any city or commission or by the board itself and shall serve at the pleasure of the appointing entity.

(5) Board members may be compensated forty dollars (\$40.00) for each day in the actual performance of duties, but the total amount to be received as compensation shall not exceed the sum of one thousand dollars (\$1,000) per year. Actual expenses shall be paid in addition to compensation. The payment for expenses shall be paid from funds of the authority upon presentation of itemized vouchers, signed by the board member and under oath made to the secretary of the authority.

(6) The authority shall be liable and responsible for the actions of the board members and employees of the authority when the board members and employees are performing their duties on behalf of the authority.

(7) Composition of the board may be modified from time to time by the board, provided that:

(a) The board adopts by majority vote at a regularly scheduled meeting a statement of intent to revise the board composition and a complete description of the proposed revision; and

(b) The board submits the statement of intent and proposed revision to the chief elected official of each city and commission within the authority for review and comment; and

(c) Each city or commission is provided a minimum of sixty (60) days in which to comment; and

(d) The board adopts a resolution revising the board composition by the affirmative vote of two-thirds (2/3) of all board members at a regularly scheduled meeting.

History.

I.C., § 40-2106, as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 4, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2106 was repealed. See Prior Laws, § 40-2101.

§ 40-2107. Board procedures. — (1) At its first meeting following the appointment of all members, the board shall elect a chairman and a vice chairman from their number and appoint a secretary and a treasurer who need not be from their number for terms fixed by them. The offices of the secretary and treasurer may be filled by the same person. Certified copies of all appointments under the hand of the chairman and seal of the authority shall be filed with the clerk of each county and with the clerk of each city and with the secretary of each highway district in the region.

(2) A majority of the board members constitutes a quorum for the conduct of business. A majority of board members present at a board meeting at which a quorum has been established may exercise all of the powers of the full board except as otherwise provided in this chapter.

(3) As soon as practicable after organization the board shall designate a day, hour and place at which regular meetings shall be held. Minutes of all meetings must show what business was conducted, what votes were taken and what bills were submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what services or materials, the amount claimed and the amount allowed. The list shall be signed by the chairman and attested by the secretary.

(4) All meetings of the board shall be public and all records of the authority shall be open to the inspection of the public during normal business hours. Special meetings of the board may be held upon the call of the board chairman or a majority of the board. The secretary must give each member not joining in the order five (5) days' notice of any special meeting.

(5) The authority treasurer shall execute and file with the authority secretary an official bond in an amount of money equal to an amount that may come into his hands as treasurer but in no case shall the amount of the bond be less than an amount fixed by the board. The cost of such bond shall be a necessary expense paid by the authority.

History.

I.C., § 40-2107, as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 5, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2107 was repealed. See Prior Laws, § 40-2101.

§ 40-2108. Corporate powers of an authority. — A regional public transportation authority has power:

(1) To sue and be sued; (2) To raise and expend funds as provided in this chapter; (3) To issue revenue bonds; (4) To adopt and use an official seal; (5) To purchase and hold lands, make contracts, purchase and hold personal property as may be necessary or convenient for the purposes of this act, and to sell and exchange real and personal property. The board shall first adopt a resolution finding that the property to be sold or exchanged is no longer needed by or useful to the district; that a public hearing is to be held, of which hearing notice shall be published in accordance with the provisions of [section 40-206, Idaho Code](#).

History.

[I.C., § 40-2108](#), as added by 1994, ch. 327, § 1, p. 1052.

STATUTORY NOTES

Prior Laws.

Former § 40-2108 was repealed. See Prior Laws, § 40-2101.

§ 40-2109. Powers and duties of board. — (1) Only one (1) regional public transportation authority shall exist within a county and when established pursuant to this chapter the authority will have exclusive jurisdiction over all publicly funded or publicly subsidized transportation services and programs except those transportation services and programs under the jurisdiction of public school districts and law enforcement agencies.

(2) The authority may provide public transportation services on fixed or unfixed routes; public transportation services on fixed or unfixed schedules; paratransit services for the elderly and people with disabilities as defined in the Americans with disabilities act; special services to accommodate community celebrations, sporting events and entertainment open to the public; public transportation services between cities, rural areas, park-and-ride facilities, employment centers, health care facilities, universities and commercial and shopping areas; commuter services between communities; van or car pool programs.

(3) The authority shall fix by resolution the fares and fees to be charged those who use its public transportation services. Prior to adopting any such resolution, the board shall publish proposed fares and fees in at least one (1) issue of a newspaper having general circulation in the region and shall hold at least one (1) public hearing on the proposed fares and fees.

(4) The authority may establish, fund, control and operate the administrative, equipment maintenance, servicing, storage, fueling, and other facilities required to support a safe and efficient public transportation system. In carrying out the purposes of this chapter, the authority may employ personnel, contract for services with public and private agencies and retain legal and other professional counsel.

(5) The board may adopt resolutions consistent with law, as necessary, for carrying out the purposes of this chapter and discharging all powers and duties conferred to the authority pursuant to this chapter.

(6) The authority shall have an annual audit made of the financial affairs of the authority as required in [section 67-450B, Idaho Code](#), by the first day

of December following the close of the fiscal year.

(7) The authority may enter into cooperative agreements with the state, other authorities, counties, cities and highway districts under the provisions of [section 67-2328, Idaho Code](#).

History.

[I.C., § 40-2109](#), as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 6, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2109 was repealed. See Prior Laws, § 40-2101.

Federal References.

The Americans with disabilities act, referred to in subsection (2), is codified as [42 USCS § 12101 et seq.](#)

RESEARCH REFERENCES

A.L.R. — Who is recipient of, and what constitutes program or activity receiving, federal financial assistance for purposes of § 504 of Rehabilitation Act ([29 U.S.C.A. § 794](#)), which prohibits any program or activity receiving financial assistance from discriminating on basis of disability. [160 A.L.R. Fed. 297](#).

When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, [42 U.S.C.A. § 12132](#). [160 A.L.R. Fed. 637](#).

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, [42 U.S.C.A. § 12132](#). [163 A.L.R. Fed. 339](#).

§ 40-2110. Contributions. — The counties, cities, highway districts and other governmental entities within the region may, at their discretion, enter into a cooperative agreement with the authority in order to contribute funds from any source, provide services-in-kind and loan or convey real and personal property to the authority in recognition of costs of the authority, to maintain continuity of existing public transportation services, or to implement new services.

History.

I.C., § 40-2110, as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 7, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 40-2110 was repealed. See Prior Laws, § 40-2101.

§ 40-2111. Issuance of revenue bonds. — A regional public transportation authority may issue revenue bonds in the same manner and form as under the municipal bond law contained in chapter 10, title 50, Idaho Code, provided that the ordinance required therein shall be by resolution of the board. For the purpose of this section, the term “city” in the municipal bond law shall include the term “regional public transportation authority.”

History.

I.C., § 40-2111, as added by 1994, ch. 327, § 1, p. 1052.

STATUTORY NOTES

Prior Laws.

Former § 40-2111 was repealed. See Prior Laws, § 40-2101.

§ 40-2112. Budget. — (1) The board shall annually adopt a budget and cause a public hearing to be held upon the budget.

(2) Notice of the budget hearing shall be posted at least ten (10) days prior to the date of the meeting in at least one (1) conspicuous place in each county within the boundaries of the regional public transportation authority and at the administrative offices of the regional public transportation authority. A copy of the notice shall also be published in accordance with the provisions of [section 40-206, Idaho Code](#). The place, hour and day of the hearing shall be specified in the notice, as well as the place where the budget may be examined prior to the hearing. A full and complete copy of the proposed budget shall be published with and as a part of the publication of the notice of hearing.

(3) The budget shall be available for public inspection from and after the date of the posting of notice of hearing at a place and during business hours as the board may direct.

(4) A quorum of the board shall attend the hearing and explain the proposed budget and hear any and all objections to it.

(5) The budget shall be completed and finalized not later than the Tuesday following the first Monday in September for the ensuing fiscal year.

(6) The fiscal year of the authority shall commence on the first day of October of each year.

History.

[I.C., § 40-2112](#), as added by 1994, ch. 327, § 1, p. 1052; am. 1996, ch. 353, § 8, p. 1177; am. 2003, ch. 210, § 2, p. 555.

STATUTORY NOTES

Prior Laws.

Former § 40-2112 was repealed. See Prior Laws, § 40-4101.

§ 40-2113. Exemption from taxation. — It is hereby found, determined and declared that the creation of a regional public transportation authority is in all respects for the benefit of the people of the state of Idaho, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and that projects and services operated by authorities are essential parts of the public transportation system, and that such authorities will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter. The state of Idaho declares that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdiction, control, possession, or supervision or upon the activities of authorities in the operation and maintenance of projects and services, or upon any charges, fees, revenues, or other income received by authorities, or upon special fuels used in motor vehicles owned or leased and operated by authorities, and that the bonds of authorities and the income therefrom shall at all times be exempt from taxation. Regional public transportation authorities created pursuant to this chapter shall be exempt from the sales tax imposed under the provisions of [section 63-3621, Idaho Code](#), shall be issued a tax exemption certificate as provided for in [section 63-3622, Idaho Code](#), and shall be entitled to such credits and refunds as other political subdivisions of the state of Idaho are entitled under [section 63-2423, Idaho Code](#).

History.

[I.C., § 40-2113](#), as added by 1994, ch. 327, § 1, p. 1052; am. 2004, ch. 152, § 1, p. 487.

STATUTORY NOTES

Prior Laws.

Former § 40-2113 was repealed. See Prior Laws, § 40-2101.

Effective Dates.

Section 2 of S.L. 2004, ch. 152 declared an emergency and made the amendment of this section retroactively effective to July 1, 2002. Approved

March 23, 2004.

§ 40-2114. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 40-2114, as added by 1994, ch. 327, § 1, p. 1052.

STATUTORY NOTES

Prior Laws.

Former § 40-2114 was repealed. See Prior Laws, § 40-2101.

Compiler's Notes.

The term “this act” in this section refers to S.L. 1994, ch. 327, which is codified as §§ 40-2101 to 40-2114.

Chapter 22
DETACHMENT OF TERRITORY BY PETITION AND
ORGANIZATION OF NEW DISTRICT

Sec.

40-2201. Highway districts subject to detachment.

40-2202. Petition.

40-2203. Order for hearing upon petition.

40-2204. Notice of hearing and petition.

40-2205. Hearing — Order for detachment and organization.

40-2206. New highway district — Establishment of subdistricts.

40-2207. First commissioners of new highway district.

40-2208. Organization and operation of new highway district.

40-2209. Effect of detachment of territory — Apportionment of indebtedness.

40-2210. Validity of outstanding bonds and warrants not affected.

40-2211. Filing of certified copy of order.

40-2212. Highway distribution account — Eligibility.

40-2213. Transfer of property, funds and materiel.

§ 40-2201. Highway districts subject to detachment. — A portion of the territory of an existing highway district, provided that the district is not a single county-wide highway district organized under the provisions of chapter 14, title 40, Idaho Code, whether the district is situated wholly in one (1) or more counties, may be detached from the highway district and established as a new highway district as provided in this chapter.

History.

I.C., § 40-2101, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 82, p. 82.

STATUTORY NOTES

Prior Laws.

Former title 40 of chapter 22, which consisted of §§ 40-2201 to 40-2218, was repealed as follows:

40-2201. S.L. 1913, ch. 179, § 9, p. 564; reen. C.L. 63:9; C.S., § 1580; I.C.A., § 39-2101; am. 1935 (2nd E.S.), ch. 4, § 1, p. 9. Repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

40-2202, 40-2203. 1913, ch. 179, § 6, p. 560; am. 1915, ch. 64, § 5, p. 161; 1913, ch. 179, § 6a, as added by 1915, ch. 64, § 6, p. 161; reen. C.L. 63:6 and 63:6a; C.S., §§ 1572, 1573; I.C.A., §§ 39-2102, 39-2103; am. 1974, ch. 12, §§ 36, 37, p. 61. Repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-2204, 40-2205. S.L. 1913, ch. 179, § 7, p. 561; am. 1915, ch. 64, § 7, p. 561; S.L. 1913, ch. 179, § 7a, as added by 1915, ch. 64, § 8, subd. 7a, p. 162; reen. C.L. 63:7, 63:7a; C.S., §§ 1574, 1575; 1927, ch. 183, § 1, p. 247; I.C.A., §§ 39-2104, 39-2105. Repealed by 1950 (1st E.S.), ch. 87, § 24, p. 117.

40-2206. 1913, ch. 179, § 7b, as added by 1915, ch. 64, § 8, subd. 7b, p. 162; reen. C.L. 63:7b; am. 1919, ch. 156, § 1, p. 515; C.S., § 1576; am. 1921, ch. 183, § 1, p. 378; I.C.A., § 39-2106; am. 1937, ch. 58, § 1, p. 78; am. 1939, ch. 34, § 1, p. 72; am. 1950 (E.S.), ch. 87, § 23, p. 117; am. 1951,

ch. 91, § 1, p. 163; am. 1974, ch. 12, § 38, p. 61. Repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-2207 to 40-2209. S.L. 1913, ch. 179, § 8, p. 163 as amended by 1915, ch. 64, § 9, p. 163 and S.L. 1913, ch. 179, §§ 8a, 8b as added by 1915, ch. 64, § 10, p. 163; reen. C.L. 63:8, 8a, 8b; C.S., §§ 1577 to 1579; am. 1925, ch. 66, § 1, p. 97; am. 1929, ch. 109, § 1, p. 176; am. 1931, ch. 90, § 1, p. 153; I.C.A., §§ 39-2107 to 39-2109; am. 1935 (2nd E.S.), ch. 4, §§ 2 to 4, p. 9; am. 1945, ch. 156, § 1, p. 232. Repealed by S.L. 1950 (1st E.S.), ch. 87, § 24, p. 117.

40-2210. 1913, ch. 179, § 10, p. 565; am. 1915, ch. 35, § 1, p. 114; 1915, ch. 64, § 11, p. 164; reen. C.L. 63:10; C.S., § 1581; I.C.A., § 39-2110; 1983, ch. 179, § 7, p. 487; 1984, ch. 195, § 6, p. 445; 1984, ch. 236, § 1, p. 564; 1985, ch. 172, § 1, p. 450. Repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-2211. 1913, ch. 179, § 10a, as added by 1915, ch. 64, § 12, p. 164; reen. C.L. 63:10a; C.S., § 1582; am. 1923, ch. 115, § 1, p. 147; am. 1925, ch. 177, § 8, p. 315; am. 1929, ch. 195, § 7, p. 362; am. 1931, ch. 154, § 1, p. 259; I.C.A., § 39-2111; am. 1950 (E.S.), ch. 80, § 1, p. 107; am. 1963, ch. 171, § 1, p. 495. Repealed by S.L. 1983, ch. 179, § 4.

40-2212. 1913, ch. 179, § 11, p. 565; am. 1915, ch. 64, § 13, p. 165; compiled and reen. C.L. 63:11; C.S., § 1583; I.C.A., § 39-2112; 1933, ch. 19, § 1, p. 25; 1937, ch. 248, § 2, p. 446; 1951, ch. 160, § 1, p. 355; 1974, ch. 12, § 39, p. 61. Repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-2212a. S.L. 1950 (E.S.), ch. 26, § 1, p. 42. Repealed by S.L. 1973, ch. 260, § 2.

40-2213 to 40-2215. 1923, ch. 47, § 1, p. 51; 1923, ch. 206, § 1, p. 331; I.C.A., §§ 39-2113, 39-2114; 1947, ch. 193, § 1, p. 470; am. 1974, ch. 12, §§ 40, 41, p. 61. Repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

40-2216. S.L. 1947, ch. 221, § 1, p. 532; am. 1949, ch. 136, § 4, p. 239; 1950 (E.S.), ch. 25, § 1, p. 39; 1951, ch. 92, § 1, p. 164; 1953, ch. 214, § 1, p. 324; 1955, ch. 254, § 1, p. 562. Repealed by S.L. 1957, ch. 101, § 3, p. 175.

40-2217. S.L. 1947, ch. 221, § 2, p. 532; am. 1950 (E.S.), ch. 25, § 2, p. 39; am. 1955, ch. 254, § 2, p. 562; am. 1974, ch. 12, § 42, p. 61. Repealed by S.L. 1980, ch. 163, § 1.

40-2218. S.L. 1947, ch. 221, § 3, p. 532. Repealed by S.L. 1950 (E.S.), ch. 25, § 3, p. 41.

Compiler's Notes.

Both S.L. 1994, ch. 327 and S.L. 1994, ch. 331 enacted a chapter 21 in title 40. The provisions enacted by S.L. 1994, ch. 33 were redesignated, through the use of brackets, as chapter 22 of title 40. That redesignation was made permanent by S.L. 2005, ch. 25.

§ 40-2202. Petition. — Whenever electors of a portion of the territory embraced in any existing highway district desire that their portion be detached from the highway district and organized into a new highway district, a petition describing the territory by its boundaries, signed by not less than ten (10) electors qualified to vote at a highway district election and residing in the territory sought to be detached shall be presented to the commissioners of the highway district.

History.

I.C., § 40-2102, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 83, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2202 was repealed. See Prior Laws, § 40-2201.

§ 40-2203. Order for hearing upon petition. — Immediately upon its next regular meeting or at a special meeting called for that purpose, the highway district commissioners shall by order or resolution fix a time and place for a hearing of the petition, which time shall not be less than twenty-one (21) days from and after the date of the first publication of the notice of the petition and of the hearing.

History.

I.C., § 40-2103, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 84, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2203 was repealed. See Prior Laws, § 40-2201.

§ 40-2204. Notice of hearing and petition. — The highway district commissioners shall require their clerk to have a notice published in accordance with the provisions of [section 40-206, Idaho Code](#), setting forth the fact that a petition has been filed with the commissioners. The notice shall state the name of the highway district from which territory is proposed to be detached and organized into a new highway district; a concise description of the boundaries of the territory so proposed to be detached and organized into a new highway district; the current bonded and current warrant indebtedness of the district; a notice of the time and place when and where the petition will be heard by the highway district commissioners; and notice that any elector qualified to vote at an election of the highway district may, prior to or at the time of the hearing, file with the highway district clerk written objections to the proposed detachment and organization of said territory.

History.

[I.C., § 40-2104](#), as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 85, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2204 was repealed. See Prior Laws, § 40-2201.

§ 40-2205. Hearing — Order for detachment and organization. — At the time and place specified in the notice, the highway district commissioners shall consider the petition and all written objections filed with them and shall hear all persons in relation to it. Upon the conclusion of the hearing, which may be continued from day to day, if the commissioners shall determine that the detachment from the highway district of the territory described in the petition is practicable and to the best interests of the territory and of the highway district, they shall, within ten (10) days, make and enter an order directing that the territory be detached from the highway district and be organized into a new highway district at a date not less than thirty (30) nor more than sixty (60) days from and after the date of the order.

History.

I.C., § 40-2105, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 86, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2205 was repealed. See Prior Laws, § 40-2201.

§ 40-2206. New highway district — Establishment of subdistricts. —

When the commissioners of the existing highway district order the establishment of a new highway district, they shall have the duty to name the new highway district and to divide the new highway district into three (3) subdistricts, as nearly equal in population, area and mileage as practicable, to be known as highway commissioners subdistricts one, two and three. Subdistricts may be revised or modified as changes in conditions demand. Not more than one (1) of the highway district commissioners shall be an elector of the same highway subdistrict.

History.

I.C., § 40-2106, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 87, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2206 was repealed. See Prior Laws, § 40-2201.

§ 40-2207. First commissioners of new highway district. — The existing highway district commissioners shall appoint a qualified elector to serve as a highway district commissioner for each of the subdistricts of the new highway district. The commissioners shall provide each of the commissioners appointed to the new highway district with a certificate of appointment. Each appointed highway district commissioner shall take and subscribe the official oath, which oath shall be filed in the office of the newly organized highway district commissioners. The first commissioners shall serve until the next highway district election as specified in [section 40-1305, Idaho Code](#).

History.

[I.C., § 40-2107](#), as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 88, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2207 was repealed. See Prior Laws, § 40-2201.

§ 40-2208. Organization and operation of new highway district. —

The newly organized highway district shall be organized and operated in accordance with the provisions of chapter 13, title 40, Idaho Code, except for the provisions of sections 40-1323, 40-1333 and 40-1334, Idaho Code. All of the public highways, public rights-of-way and public streets located within the boundaries of any unincorporated city located within the new highway district shall be under the exclusive jurisdiction of the new highway district and such highways and streets shall be eligible for maintenance and construction with highway district funds in the same manner as any other highways in the highway district system.

History.

I.C., § 40-2108, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 89, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2208 was repealed. See Prior Laws, § 40-2201.

Compiler's Notes.

Section 40-1334, referenced in this section, was repealed by S.L. 1999, ch. 332, § 16, p. 864, effective July 1, 1999.

§ 40-2209. Effect of detachment of territory — Apportionment of indebtedness. — The detachment of territory from the district shall be deemed to relate only to the operations of the district subsequent to the order of detachment. Territory detached and all taxable property in that territory shall be and remain liable for the proportionate share of all bonded, warrant, and other indebtedness incurred by the district prior to the time of detachment. The proportionate share of the indebtedness of the district incurred prior to the order of detachment shall be borne by the detached territory and shall be computed as provided in [section 40-1609, Idaho Code](#).

History.

[I.C., § 40-2109](#), as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 90, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2209 was repealed. See Prior Laws, § 40-2201.

§ 40-2210. Validity of outstanding bonds and warrants not affected.

— Nothing in this chapter shall be construed as impairing the validity of any bonds or warrants of a highway district outstanding at the time of the detachment of any territory.

History.

I.C., § 40-2110, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 91, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2210 was repealed. See Prior Laws, § 40-2201.

§ 40-2211. Filing of certified copy of order. — The commissioners shall cause a certified copy of the order of detachment of territory and organization of the new highway district to be filed for record in the office of the county recorder of the county in which the highway district is situate, and shall transmit a certified copy of the order to the highway district commissioners of the newly organized highway district.

History.

I.C., § 40-2111, as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 92, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2211 was repealed. See Prior Laws, § 40-2201.

§ 40-2212. Highway distribution account — Eligibility. — After the new highway district has been organized and in operation for a full quarter of a calendar year, the newly organized highway district shall be eligible for apportionment of funds from the highway distribution account as provided in [section 40-709, Idaho Code](#).

History.

[I.C., § 40-2112](#), as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 93, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2212 was repealed. See Prior Laws, § 40-2201.

§ 40-2213. Transfer of property, funds and materiel. — Except for the highways, bridges, public streets and public rights-of-way within the detached territory, none of the property, either real or personal, or any funds, materiel, supplies or equipment owned and under the control of the highway district from which the territory was detached shall be transferred to the newly organized highway district unless specifically authorized in writing by the highway district owning and controlling such property. However, the highway district organizing the new highway district may provide property, funds, personnel, materiel or services to the newly organized highway district in accordance with the provisions of [section 67-2328, Idaho Code](#).

History.

[I.C., § 40-2113](#), as added by 1994, ch. 331, § 1, p. 1060; am. and redesign. 2005, ch. 25, § 94, p. 82.

STATUTORY NOTES

Prior Laws.

Former § 40-2213 was repealed. See Prior Laws, § 40-2201.

Effective Dates.

Section 2 of S.L. 1994, ch. 331 declared an emergency. Approved March 31, 1994.

Chapter 23

MISCELLANEOUS PROVISIONS

Sec.

40-2301. Right of entry to make surveys.

40-2302. Public acquires fee simple title — Record and dedication of highways.

40-2303. Public use of private dam or bridge.

40-2304. Construction of sidewalks.

40-2305. Personal delivery devices.

40-2306. Felling tree into highway — Penalty.

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40-2308. Corporations may lay tracks and water mains.

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40-2310. Cattle guards across roads — Landowner's right to construct — Gates.

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40-2315. Damage to highways or ditches by livestock.

40-2316. Private highways — Establishment.

40-2317. Removal of fences.

40-2318. Turning highways across private lands.

40-2319. Encroachments — Removal — Notice — Penalty for failure to remove — Removal by county or highway district — Abatement.

40-2320. [Repealed.]

40-2321. Bridges and culverts.

40-2322. Construction or repair of bridges and culverts by director of highways.

40-2323. Abatement of flooding of highways — Right of entry — Court action for abatement.

40-2324. Authorization and compensation for maintenance of public highways.

§ 40-2301. Right of entry to make surveys. — Agents and employees of the board, county commissioners and highway district commissioners shall have the right to enter upon any land to make surveys for any of the purposes of this title in the manner provided by law. Agents and employees of the board, county commissioners and highway district commissioners who are licensed as, or under the direction of, professional land surveyors shall have the right to enter upon any land to set right-of-way monuments for the purposes of this title in the manner provided by law.

History.

I.C., § 40-2301, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 364, § 3, p. 1139.

STATUTORY NOTES

Prior Laws.

Former §§ 40-2301 to 40-2306, which comprised 1921, ch. 99, §§ 1 to 6, p. 224; I.C.A., §§ 39-2201 to 39-2206; am. 1974, ch. 12, §§ 43, 44, p. 61, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-2302. Public acquires fee simple title — Record and dedication of highways. — (1) By taking or accepting land for a highway, the public acquires the fee simple title to the property. The person or persons having jurisdiction of the highway may take or accept lesser estate as they may deem requisite for their purposes.

(2) In all cases where consent to use the right-of-way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing conveying the right-of-way and incidents to it, signed and acknowledged by the party making it, or a certified copy of the decree of the court condemning it, must be made, filed and recorded in the office of the recorder of the county in which the land conveyed or condemned shall be particularly described.

(3) No highway dedicated by the owner to the public shall be deemed a public highway, or be under the use or control of a county or highway district unless the dedication shall be accepted and confirmed by the commissioners of the county or highway district.

History.

I.C., § 40-2302, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2302 was repealed. See Prior Laws, § 40-2301.

CASE NOTES

Decisions Under Prior Law

[Previous easement.](#)

[Vacation of easement released.](#)

[Previous Easement.](#)

Where municipal corporation acquired an easement for highway over land upon which a prior easement exists, it took it subject to previous easement. *City of Twin Falls v. Harlan*, 27 Idaho 769, 151 P. 1191 (1915).

Vacation of Easement Released.

Where public highway had run diagonally across a forty (40) acre tract owned by plaintiff, and proper authorities had established a new highway along line of said forty (40) acre tract, at the instance and request of owner, and vacated the “diagonal road,” conditioned on plaintiff’s placing newly established highway in a good and passable condition as a public highway, public had a right to travel “diagonal road” until such condition was complied with, and vacation of such “diagonal road” did not take place until the new highway was placed in proper condition. *Rasmussen v. Silk*, 26 Idaho 341, 143 P. 525 (1941).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 190 et seq.

C.J.S. — 39A C.J.S., Highways, § 135 et seq.

ALR. — Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof. 43 A.L.R.3d 862.

Construction of highway through park as violation of use to which park property may be devoted. 60 A.L.R.3d 581.

Private improvement of land dedicated but not used as street as estopping public rights. 36 A.L.R.4th 625.

§ 40-2303. Public use of private dam or bridge. — No right shall be deemed to have vested in the public for highway or other purposes, where free use may be granted to the public to a right-of-way for the purposes of travel, over and upon any dam or bridge constructed over and across any of the streams of this state, and owned by any person.

History.

I.C., § 40-2303, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2303 was repealed. See Prior Laws, § 40-2301.

§ 40-2304. Construction of sidewalks. — Any owner or occupant of land may construct a sidewalk on the highway along the line of his land subject to authority conferred by law on the respective highway or county commissioners and the director of highways. Any person using the sidewalk with a horse or team without permission of the owner, is liable to the owner or occupant in the sum of twenty-five dollars (\$25.00) for each trespass, and for all damages suffered.

History.

I.C., § 40-2304, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2304 was repealed. See Prior Laws, § 40-2301.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 89, 90.

ALR. — Use or improvement of highway as establishing grade necessary to entitle abutting owner to compensation on subsequent change. [2 A.L.R.3d 985](#).

Abutting owner's liability for injury from ice formed on sidewalk by discharge of precipitation due to artificial conditions on premises. [18 A.L.R.3d 428](#).

Proceeding in the dark along outside path or walkway as contributory negligence. [22 A.L.R.3d 599](#).

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. [80 A.L.R.3d 687](#).

§ 40-2305. Personal delivery devices. — (1) Notwithstanding any provision of law to the contrary, a personal delivery device as defined in [section 49-117, Idaho Code](#), is authorized to operate on sidewalks and crosswalks; provided, however, that this section does not restrict a county, municipality or highway district from otherwise adopting regulations for the safe operation of personal delivery devices.

(2) All personal delivery devices shall obey all traffic and pedestrian control devices and signs.

(3) A personal delivery device operating on sidewalks and crosswalks has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device shall not unreasonably interfere with pedestrians or traffic, and shall yield the right-of-way to pedestrians on sidewalks and crosswalks.

(4) All personal delivery devices shall include a plate or marker that identifies the name and contact information of the operator of the personal delivery device and a unique identifying device number.

(5) All personal delivery devices shall be equipped with a braking system that, when active or engaged, will enable the personal delivery device to come to a controlled stop.

(6) No personal delivery device shall transport hazardous materials or hazardous wastes regulated pursuant to chapter 22, title 49, Idaho Code.

(7) No personal delivery device shall be operated on a public highway in the state, except to the extent necessary to cross a crosswalk.

(8) No personal delivery device shall operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device.

History.

[I.C., § 40-2305](#), as added by 2017, ch. 147, § 4, p. 357.

STATUTORY NOTES

Prior Laws.

Former § 43-2305, Adjoining owners may plant trees — Penalty for injury, which comprised I.C., § 40-2305, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 1996, ch. 393, § 1, effective March 20, 1996.

Another former § 40-2305 was repealed. See Prior Laws, § 40-2301.

§ 40-2306. Felling tree into highway — Penalty. — Whoever cuts down a tree so that it falls upon a highway shall remove the tree, and is liable to a penalty of ten dollars (\$10.00) for every day the tree remains on the highway.

History.

I.C., § 40-2306, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Prior Laws.

Former § 40-2306 was repealed. See Prior Laws, § 40-2301.

§ 40-2307. Removal of fallen trees. — Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove the tree or obstruction. If it is not removed, the owner or occupant is liable to a penalty of ten dollars (\$10.00) for every day until it is removed, in addition to the cost of removal.

History.

I.C., § 40-2307, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2308. Corporations may lay tracks and water mains. — Every gas, water, or railroad corporation has the power to lay conductors and tracks through the public ways and squares in any city with the consent of the city authorities, and under reasonable regulations and for just compensation, as the city authorities and the law prescribe.

History.

I.C., § 40-2308, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Utility Franchises.

The highway district legislation contained in title 40, chapters 13 and 14, does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Cities have the right to own and operate utilities and provide those services to their residents, and their surrender of this right is valid consideration for the franchise fee charged to the utilities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

The charging of a fee for a utility franchise is reasonable compensation and consideration to the cities as expressly allowed by *Const., Art. 15, § 2* and this section. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Decisions Under Prior Law

Governmental powers.

Removal of mains.

Termination of franchise.

Governmental Powers.

Where city granted right of way to railway company to lay its tracks along its streets, such city was exercising its governmental powers granted

to it by the constitution and the statutes and did not create a liability against municipality for damages occasioned by railway company exercising that right. [Trueman v. Village of St. Maries, 21 Idaho 632, 123 P. 508 \(1912\)](#).

Removal of Mains.

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to regulation by the commission, since municipalities retain the right to control and maintain their streets and alleys. [Village of Lapwai v. Alligier, 78 Idaho 124, 299 P.2d 475 \(1956\)](#).

Termination of Franchise.

License granted by unincorporated village for the construction and operation of a waterworks for a period of 25 years, which was not renewed at the end of the 25 year period, could be terminated by the village as though the license was an expired franchise. [Village of Lapwai v. Alligier, 78 Idaho 124, 299 P.2d 475 \(1956\)](#).

OPINIONS OF ATTORNEY GENERAL

Cities and counties in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities and counties to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 190 et seq.

ALR. — Liability of one excavating in highway for injury to public utility cables, conduits, or the like. [73 A.L.R.3d 987](#).

Liability of one other than electric power or light company or its employee for interruption, failure, or inadequacy of electric power. [15 A.L.R.4th 1148](#).

Highway construction contractor's liability for injuries to third persons by materials or debris on highway during course of construction or repair. 3 A.L.R.4th 770.

§ 40-2309. Railroad crossings. — Whenever highways are laid out to cross railroads on public lands, the owners or corporations using the same highway shall, at their own expense, so prepare the highway that it may cross without danger or delay, and when the right-of-way for a public highway is obtained through the judgment of any court, over any railroad, no damage shall be awarded for the simple right to cross.

History.

I.C., § 40-2309, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2310. Cattle guards across roads — Landowner's right to construct — Gates. — (1) The owner, or lessee of any land crossed by any highway, except highways maintained by the department, who encloses the land with a lawful fence, shall, with the consent of the commissioners, highway district commissioners, or other governing body having jurisdiction over the highway, have the right to enclose the land, by erecting or constructing cattle guards across the highway. Cattle guards shall be constructed in accordance with plans and specifications as the respective commissioners or other governing body having jurisdiction of the highway shall prescribe.

(2) Any owner or lessee of land constructing a cattle guard across a highway under the provisions of subsection (1) above, shall cause a gate not less than twelve (12) feet long to be constructed and maintained in the fence connected to the cattle guard. The gate shall not be more than thirty-three (33) feet from the highway. The surface of the guard adjoining the highway and gate shall be so leveled and maintained that a vehicle can pass from the highway through the gate on either side of the fence, and the gate shall be unlocked at all times.

History.

I.C., § 40-2310, as added by 1985, ch. 253, § 2, p. 586.

RESEARCH REFERENCES

Am. Jur. 2d. — 40 Am. Jur. 2d, Highways, Streets and Bridges, § 333.

C.J.S. — 40 C.J.S., Highways, § 341 et seq.

§ 40-2311. Penalty for defacing or destroying signs, signposts or facilities. — It shall be unlawful for any person to deface or destroy any signs, signposts, guideposts, or any inscription on them, or facilities erected by or under the direction of the board, a director of highways, county, or highway district commissioners. Any person found guilty shall be deemed guilty of a misdemeanor. The defacing or destroying of each sign, signpost, guidepost, or inscription, or facility shall constitute a separate offense.

History.

I.C., § 40-2311, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 40-2312. Width of highways. — (1) Where the width of a highway is stated in the plat, dedication, deed, easement, agreement, official road book, determination or other document or by an oral agreement supported by clear and convincing evidence that effectively conveys, creates, recognizes or modifies the highway or establishes the width, that width shall control.

(2) Where no width is established as provided for in subsection (1) of this section and where subsection (3) of this section is not applicable, such highways, except bridges and those located within cities, shall be not less than fifty (50) feet wide.

(3) Highways that at the time of a validation or judicial proceeding are not located on land owned by the United States or the state of Idaho or on land entirely surrounded by land owned by the United States or the state of Idaho, and that have not received maintenance at the expense of the public in at least three (3) years during the previous fifteen (15) years, shall be declared to be of such width, and none greater, as is sufficient to accommodate: (a) The existing physical road surface; (b) Existing uses of the highway; (c) Existing features included within the definition of highways in [section 40-109\(5\), Idaho Code](#); (d) Such space for existing utilities as has historically been required for ongoing maintenance, replacement and upgrade of such utilities; and (e) Space reasonably required for maintenance, motorist and pedestrian safety, necessary to maintain existing uses of the highway.

(4) Nothing in this section shall diminish or otherwise limit the authority and rights of irrigation districts, canal companies or other such entities as provided in chapters 11 and 12, title 42, Idaho Code.

(5) Nothing in this section shall diminish or otherwise limit any right of eminent domain as set forth in chapter 7, title 7, Idaho Code.

History.

[I.C., § 40-2312](#), as added by 1985, ch. 253, § 2, p. 586; am. 2013, ch. 239, § 6, p. 560.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 239, rewrote the section to the extent that a detailed comparison is impracticable.

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: “Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way.”

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

CASE NOTES**Applicability.**

District court’s determination that a road was a public highway by prescription as defined by § 40-202(3) did not violate the owners’ rights to procedural and substantive due process or result in an unconstitutional taking because the owners were put on notice by the public use of the road

and had a hearing; there was a rational basis for the application of this section to fix the width of the right-of-way and an inverse condemnation claim was time-barred under § 5-224. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Cited *Burruv v. Stanger*, 114 Idaho 50, 753 P.2d 261 (Ct. App. 1988); *Sopatky v. Lemhi County*, 151 Idaho 809, 264 P.3d 916 (2011).

Decisions Under Prior Law Highways by Prescription.

Width of highways established by prescription or public use had to be determined from a consideration of circumstances peculiar to each case, and was presumed to be 50 feet, unless facts clearly indicated that owner limited width of said road prior to time it became a highway by user. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 58 et seq.

C.J.S. — 39A C.J.S., Highways, § 65.

§ 40-2313. Trails for livestock — Laying out — Rules concerning use — Penalty. — (1) County or highway commissioners are authorized to lay out highways or designate existing highways, within their respective jurisdictions, to be used as trails for livestock. These highways may be of a width as determined by the respective commissioners, and they may lay out, alter, establish and secure lands for those highways in the same manner and under the same provisions as the laying out, or establishing, or securing rights-of-way for regular highways. A regular highway not established or designated as a livestock trail under the provisions of this section may be used for trailing livestock in a number and at a time as may be indicated in rules and regulations made for that purpose by the respective commissioners.

(2) Rules and regulations shall be entered on the minutes of the respective commissioners. When highways are provided by counties or districts and are available for use as livestock trails, the respective commissioners may by rule or regulation prohibit the use of any regular highway, or portion of it, in their respective jurisdictions, for trails over which to drive livestock.

(3) Any person driving livestock over a regular public highway in violation of rules or regulations prohibiting the use of the highway, or portion of it shall, in addition to any other penalties provided by law, be deemed guilty of a misdemeanor.

History.

I.C., § 40-2313, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

CASE NOTES

Decisions Under Prior Law [Failure to designate trailing routes.](#)

Livestock control ordinance.

Failure to Designate Trailing Routes.

Sheep owner was not prohibited from having its sheep on the highway where the board of county commissioners had not designated any highways as trailing routes; nor had it passed any regulations barring the trailing of livestock on any highways. *Etcheverry Sheep Co. v. J.R. Simplot Co.*, 113 Idaho 15, 740 P.2d 57 (1987).

Livestock Control Ordinance.

Ordinance did not contravene a former similar section regarding driving of livestock where nothing in the language of the ordinance prohibited cattle drives since it proscribed allowing livestock to run “at large” and, under the terms of the ordinance, livestock were not “at large” if they were under the “immediate effective control” of their “custodian.” *Benewah County Cattlemen’s Ass’n v. Board of County Comm’rs*, 105 Idaho 209, 668 P.2d 85 (1983).

§ 40-2314. Passageways for stock. — Passageways for stock passing beneath any highway must be bridged with suitable plank not less than eighteen (18) feet in length, and it shall be lawful for the fences of either side to converge to the bridge over the passageway. The passageway must be kept securely bridged and in good repair by the person who owns the adjoining lands. The bridge shall not be placed more than one (1) foot above the level of the passageway. Approaches to the bridge over the passageway shall be kept in good repair by the owner.

History.

I.C., § 40-2314, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2315. Damage to highways or ditches by livestock. — (1) Any person owning livestock or an employee or agent of the owner of livestock, who shall drive, range or graze the livestock along or across the public highways or ditches, or who shall permit them to range or graze along or across public highways or ditches, and thereby obstruct or partially obstruct the highway, by rolling rocks, brush or other debris on it, or destroy or injure any grades, ditches, bridges or approaches to bridges, shall immediately repair the damage done to the highway or ditch at their own expense. Any person owning livestock who shall refuse or neglect to repair any and all damage done to highways or ditches, within twenty-four (24) hours, shall be deemed guilty of a misdemeanor.

(2) All commissioners, directors of highways, highway district commissioners, and the board and their deputies, are directed to supervise the enforcement of this section.

History.

I.C., § 40-2315, as added by 1985, ch. 253, § 2, p. 586.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 40-2316. Private highways — Establishment. — Private highways may be opened for the convenience of one or more residents of any county highway system or highway district in the same manner as public highways are opened, whenever the appropriate commissioners may order the highway to be opened. The person for whose benefit the highway is required shall pay any damages awarded to landowners, and keep the private highway in repair.

History.

I.C., § 40-2316, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Cited *MacCaskill v. Ebbert*, 112 Idaho 1115, 739 P.2d 414 (Ct. App. 1987).

Decisions Under Prior Law

Constitutionality.

Easements.

Signatures required.

Constitutionality.

Law providing for establishment of private roads was not subject to constitutional objection of attempting to take private property for private use, as it authorized private road, when opened, to be used for any purpose to which it was adapted by the general public and by any individual thereof. *Latah County v. Peterson*, 3 Idaho 398, 29 P. 1089 (1892).

Easements.

In suit to establish both a public and private roadway, after abandonment of claim of existence of public highway, evidence of use of old log road or “tote” was held insufficient to establish an easement of necessity. *Carbon v. Moon*, 68 Idaho 385, 195 P.2d 351 (1948).

Signatures Required.

One signature was sufficient to authorize board of county commissioners to take steps to open private or byroad. *Latah County v. Hasfurther*, 12 Idaho 797, 88 P. 433 (1907).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 70.

C.J.S. — 29A C.J.S., Eminent Domain, § 32.

§ 40-2317. Removal of fences. — When the alteration of an old or the opening of a new highway makes it necessary to remove fences on land given, purchased or condemned by order of a court for highway purposes, notice to remove the fences shall be given by the director of highways to the owner, his occupant, or agent, or by posting the notice on the fence. If removal is not accomplished within ten (10) days, or commenced and prosecuted as speedily as possible, the director of highways may cause it to be carefully removed at the expense of the owner, and recover from him the cost of removal. The fence material may be sold to satisfy the judgment.

History.

I.C., § 40-2317, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2318. Turning highways across private lands. — If any person, through whose land any public highway is established, is desirous of turning the highway through any other part of his land, that person may, by petition, apply to the appropriate commissioners to permit him to turn the highway through another part of his land without materially increasing the distance of travel to the public. Upon receipt of a petition, accompanied by a sufficient bond to pay the cost and expense to be incurred, the appropriate commissioners may appoint three (3) disinterested viewers and a surveyor, if they deem it necessary, who shall view the ground over which the highway is proposed to be turned, and ascertain the distance the highway will be increased by the proposed alteration, and report in writing stating the several distances found, together with their opinion as to the usefulness of making the alterations. If the viewers report to the respective commissioners that the prayer of the petitioner is reasonable, the respective commissioners upon receiving satisfactory evidence that the proposed new highway has been opened a legal width, and in all respects made equal to the old highway for the convenience of travelers, may declare the new highway a public highway, make record of it, and at the same time vacate so much of the old highway as is embraced in the new. The person petitioning for the alteration shall pay all costs and expense of the view and survey, if ordered. When any person wishes to change the line or location of any public highway, he shall cause notice of his intention to apply to the appropriate commissioners having jurisdiction of the highway at its next session for permission to change the highway at his own expense, the notice to be in accordance with the provisions of [section 40-206, Idaho Code](#), and shall also cause a copy of the notice to be posted at the post office, and at three (3) other public places in the county or district, at least twenty (20) days before the meeting of the respective commissioners. The notice must clearly show the proposed change or changes, and when, where, and by whom the petition will be presented, and at the time and place designated in the notice he must present his petition, which must conform to the notice. Any person objecting to the change may, within ten (10) days, file a protest in writing against it. Any person aggrieved by the action of the respective commissioners may appeal to the district court of the county in the same

manner and with like effect as in other cases of appeal from the action of the respective commissioners.

History.

I.C., § 40-2318, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2319. Encroachments — Removal — Notice — Penalty for failure to remove — Removal by county or highway district — Abatement. — (1) If any highway or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, or otherwise, the appropriate county or highway district may require the encroachment to be removed.

(2) If the county or highway district has actual notice of an encroachment that is of a nature as to effectually obstruct and prevent the use of an open highway for vehicles or is unsafe for pedestrian or motorist use of an open highway, the county or highway district shall immediately cause the encroachment to be removed without notice.

(3) If the county or highway district elects to remove an encroachment as provided for in subsection (1) of this section, notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the highway jurisdiction. If not, it shall be posted on the encroachment, specifying the place and extent of the encroachment, and requiring him to remove the encroachment within ten (10) days.

(a) If the encroachment is not removed, or commenced to be removed, prior to the expiration of ten (10) days from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars (\$150) for each day the encroachment continues unremoved; (b) If the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the county or highway district shall commence in the proper court an action to abate the encroachment. If the county or highway district recovers judgment, it may, in addition to having the encroachment abated, recover up to one hundred fifty dollars (\$150) for every day the encroachment remained after notice, as well as costs of the legal action and removal; or (c) If the owner, occupant or person controlling the encroachment fails to respond to the notice within five (5) days after the notice is complete, the county or highway district may remove it at the expense of the owner, occupant, or person controlling the

encroachment, and the county or highway district may recover costs and expenses, as well as the sum of up to one hundred fifty dollars (\$150) for each day the encroachment remained after notice was complete.

(4) The duties referenced in the provisions of this section, whether statutory or common law, require reasonable care only and shall not be construed to impose strict liability or to otherwise enlarge the liability of the county or highway district. The county or highway district, while responsible for their own acts or omissions, shall not be liable for any injury or damage caused by or arising from the encroachment or the failure to remove or abate the encroachment as provided for in subsection (1) of this section. The provision of this section shall not be construed to impair any defense that the county or highway district may assert in a civil action.

(5) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of this title governing the power, authority or jurisdiction of a county or highway district, including the authority to regulate the use of highways or public rights-of-way for pedestrian and motorist safety.

History.

I.C., § 40-2319, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 252, § 2, p. 716; am. 2011, ch. 282, § 1, p. 765; am. 2013, ch. 264, § 1, p. 649.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 282, substituted “an open highway” for “the highway or public right of way” in the second sentence of subsection (1) and added subsection (6).

The 2013 amendment, by ch. 264, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 4 of S.L. 2000, ch. 252 declared an emergency. Approved April 12, 2000.

CASE NOTES

Decisions Under Prior Law

Action by private person.

Damages.

Declaration of public road.

Obstructions.

Pleading.

Action by Private Person.

Private person can bring such action only if he can show special injury. *Stricker v. Hillis*, 15 Idaho 709, 99 P. 831 (1909).

Damages.

Plaintiff, in action to recover special damages caused by obstruction of public street, had to allege and prove that he had sustained damages of a different kind from those sustained by the public. *Stufflebeam v. Montgomery*, 3 Idaho 20, 26 P. 125 (1891).

Declaration of Public Road.

If a county chooses to remove a gate blocking access to a road across a landowner's property, a "Declaration of Public Road" under this section is a prerequisite. *Evers v. County of Custer*, 745 F.2d 1196 (9th Cir. 1984).

Obstructions.

Where an oral dedication of land for road purposes has been accepted, in part, by the public by use, the public takes an easement over the land for the full width agreed upon by the dedication and accepted by the public and no obstructions placed in said road would work a forfeiture of the easement however long they might be suffered to remain there. *Thiessen v. Lewiston*, 26 Idaho 505, 144 P. 548 (1914).

Pleading.

In action to remove obstruction from highway established by user, it is not necessary to allege title to highway by adverse possession. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

RESEARCH REFERENCES

Am. Jur. 2d. — 40 Am. Jur. 2d, Highways, Streets and Bridges, § 450 et seq.

C.J.S. — 40 C.J.S., Highways, § 248 et seq.

§ 40-2320. Gates — Penalties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 40-2320, as added by 1985, ch. 253, § 2, p. 586, was repealed by S.L. 2000, ch. 252, § 3, effective April 12, 2000.

§ 40-2321. Bridges and culverts. — Any person intending to run water across any public highway must first, under the direction and with the approval of the directors of highways of the county or district, or if the highway be the boundary of two (2) counties or districts, then, under the direction and with the approval of the director of highways of both counties or districts, construct a ditch of sufficient size to carry all the water, and must build a substantial bridge, with easy grades on and off the bridge over the ditch not less than sixteen (16) feet wide. When the quantity of water of any ditch is such that a pipe or culvert will carry the water, the water may be conducted across the highway by means of a pipe or culvert, which must be adapted to the surface of the highway, and the highest point of which shall be at least two (2) feet beneath the surface of the highway, be built of a length not less than sixteen (16) feet, and in a substantial manner permitting uninterrupted travel. All such bridges or culverts shall be of concrete, and all pipes of concrete, steel or other mineral substance. No wooden bridges, pipes or culverts shall be constructed, unless it appears to the satisfaction of the respective commissioners that the cost of the bridge, pipe or culvert would be unreasonably increased by being made of concrete, steel or other mineral substance, and that there is not sufficient travel over the highway to make it necessary for the protection and convenience of public travel that the bridge, pipe or culvert be constructed of those materials. The respective commissioners may in their discretion and by resolution, permit the bridge, pipe or culvert to be constructed of wood or other material, but no bridge, pipe or culvert shall be constructed of wood or any materials other than those specified in this section except upon a resolution of the appropriate commissioners setting forth the reasons and particularly specifying the place of the construction. When a bridge, pipe or culvert shall have been constructed as required, and accepted and approved by the director of highways, it shall become county property and be maintained as other county bridges.

History.

I.C., § 40-2321, as added by 1985, ch. 253, § 2, p. 586.

CASE NOTES

Decisions Under Prior Law Restoration of Highway.

When a person constructs a ditch or canal across public highway, he is bound to restore or unite the highway at his own expense by some reasonably safe and convenient means of passage, and to keep the same in good repair. *Lewiston v. Booth*, 3 Idaho 692, 34 P. 809 (1893).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets and Bridges, § 92 et seq.

§ 40-2322. Construction or repair of bridges and culverts by director of highways. — If any person owning or having ditches across any public highway, fails or neglects to build bridges or culverts over them as required, or to keep them, or the public highway in good repair, it is the duty of the director of highways of the county or district to build or repair them at the expense of that person, and the cost of them is a lien upon the land and premises of the ditch owner, and may be sued for and collected, by and in the name of the director of highways, in any court of competent jurisdiction.

History.

I.C., § 40-2322, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2323. Abatement of flooding of highways — Right of entry — Court action for abatement. — (1) If the owner or occupant of land lying adjacent to or near any highway laid out or constructed, or any other person, shall maintain or cause to be maintained, or allow any dam, dike, or levee across any swale, hollow, or natural water drain or channel, either inside or outside any fence or other enclosure which may enclose the land, and shall thereby cause water to back upon, overflow or accumulate upon the highway, the director of highways of the county or district, or other official having direct supervision of the maintenance of the highway, or any other agent appointed by the respective commissioners, may go upon the premises and at the expense of the county or district install culverts and drains as may be necessary, and in a manner as to cause water to drain from the highway to be carried down its natural channel to some point where it may be disposed of without damage to the highway and adjoining landowners.

(2) Whenever it is necessary or convenient to do so, in carrying out the provisions of subsection (1) above, the respective commissioners who have by law the general supervision and control of the highway, are empowered to go upon and work upon the lands and premises where the dams, dikes and levees are situated.

(3) If it is denied that the dam, dike or levee causes water to back up, overflow or accumulate on the highway, or if the owner or occupant of the land, or person causing the dam, dike or levee to be maintained, refuses either to install suitable culverts or drains or does not allow the director of highways or other official having immediate supervision of the maintenance of the highway to do so, then the officer shall report the facts to the appropriate commissioners and they shall commence an action in the proper court to procure culverts or drains to be installed or the dam, dike, or levee abated as a nuisance. If the respective commissioners recover judgment, they may, in addition to having culverts installed or the dam, dike or levee abated as a nuisance, recover fifty dollars (\$50.00) for every day the culverts remained uninstalled after the date of rendition of judgment in the action, and may also recover the costs of the action, and in an appropriate

action, may also recover the cost and expenses of the installation of culverts or drains and the costs of suit.

History.

I.C., § 40-2323, as added by 1985, ch. 253, § 2, p. 586.

§ 40-2324. Authorization and compensation for maintenance of public highways. — Whenever any nongovernmental entity desires to maintain all or part of a public highway or public right-of-way and desires to receive compensation for such maintenance [the entity] may petition the appropriate public highway agency for approval. The highway agency shall consider said petition and after reviewing the pertinent facts regarding the request, may approve or disapprove the request. If the highway agency approves the request of the nongovernmental entity, the highway agency shall pass a resolution which should outline the details and conditions for said authorization. Provided however, the granting of the compensation to that nongovernmental entity shall not exceed the dollar amount of the highway and bridge ad valorem tax levy that was assessed against the property of that nongovernmental entity under the provisions of [section 40-801, Idaho Code](#), for the previous fiscal year. Authorization and compensation granted under this section shall not accumulate from year to year, but must be applied for each calendar year.

History.

[I.C., § 40-2324](#), as added by 1994, ch. 319, § 1, p. 1020.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to supply probable missing words.

Chapter 24

LOCAL HIGHWAY TECHNICAL ASSISTANCE COUNCIL

Sec.

40-2401. Local highway technical assistance council.

40-2402. Council organization — Personnel.

40-2403. Authority of the council.

40-2404. Council fiscal year — Annual report.

40-2405. Fiscal audits.

§ 40-2401. Local highway technical assistance council. — (1) A local highway technical assistance council is hereby created. The council shall be a public agency, and is the instrumentality of its member jurisdictions. The council and its officers and employees shall not be subject to the administrative or management control of the Idaho transportation department.

(2) The council shall consist of nine (9) members, three (3) each to be appointed by the association of Idaho cities, Idaho association of counties, and the Idaho association of highway districts. Council members shall serve at the pleasure of the appointing authority.

(3) Members of the council may be entitled to compensation for services at a rate not to exceed one hundred dollars (\$100) per day as determined by the members' respective associations and actual and necessary expenses. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in [section 59-1302\(31\), Idaho Code](#). Compensation and reimbursement shall be made from the local highway technical assistance council accounts established in [section 40-717, Idaho Code](#).

History.

[I.C., § 40-2401](#), as added by 1994, ch. 280, § 5, p. 867; am. 1995, ch. 268, § 2, p. 866; am. 2003, ch. 241, § 1, p. 623.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Prior Laws.

Former §§ 40-2401 to 40-2403, which comprised 1917, ch. 35, §§ 1 to 3, p. 80; reen. C.L. 63:11g to 63:11i; C.S., §§ 1584 to 1586; I.C.A., §§ 39-2301 to 39-2303; am. 1945, ch. 88, §§ 1 to 3, p. 135; [I.C., § 40-2401A](#), as added by 1966 (2nd E.S.), ch. 10, § 1, p. 27; 1974, ch. 12, §§ 45, 46, p. 61, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Compiler's Notes.

Websites for organizations referenced in subsection (2): association of Idaho cities — *<http://www.idahocities.org/>*

Idaho association of counties — *<http://www.idcounties.org/>*

Idaho association of highway districts — *<http://www.iahd.com>*.

§ 40-2402. Council organization — Personnel. — (1) The offices of the council shall be maintained in Ada county, and the members shall meet and organize as soon as all appointments have been made, or as provided in [section 40-2401, Idaho Code](#). At the initial meeting, and each year thereafter, the members shall, by a majority vote of the total membership, elect a chairman and a vice chairman.

(2) The council shall meet quarterly for regular business sessions, and at such other times at the call of the chairman, or at the request of any three (3) members.

(3) The council may appoint a local highway administrator and fix his compensation, and the administrator shall hold office at the pleasure of the council. The administrator shall serve as secretary and executive officer of the council and carry out such duties as are delegated by the council. The council may employ other personnel, prescribe duties, and fix compensation.

History.

[I.C., § 40-2402](#), as added by 1994, ch. 280, § 5, p. 867; am. 2001, ch. 183, § 14, p. 613.

STATUTORY NOTES

Prior Laws.

Former § 40-2402 was repealed. See Prior Laws, § 40-2401.

§ 40-2403. Authority of the council. — The council shall have the authority to:

(1) Represent its member jurisdictions in conferences, meetings and hearings related to highways, roads and streets and other transportation factors affecting local highway jurisdictions;

(2) Develop uniform standards and procedures that may be recommended to its member jurisdictions for the construction, maintenance, use, operation and administration of local highways;

(3) Cooperate with and receive and expend aid and donations from the federal or state governments, and from other sources for the administration and operation of the council;

(4) Make recommendations to the Idaho transportation board for the distribution and prioritization of federal funds for local highway projects;

(5) Assist the legislature by providing research and data relating to transportation matters affecting local highway jurisdictions within the state;

(6) Maintain and disseminate information to local highway jurisdictions of federal and state legislation and administrative rules and regulations affecting local highway jurisdictions;

(7) Maintain and disseminate information to local highway jurisdictions of activities relating to ground transportation in other states;

(8) When authorized by the participating local jurisdiction, to act for that local jurisdiction through a joint exercise of powers agreement with any other local jurisdiction, and any agency of the state of Idaho, or any agency of the federal government;

(9) Buy, sell, receive and exchange property, both real and personal, as necessary to perform its functions;

(10) Be the sole and exclusive authority for the expenditure of the moneys made available by appropriation or otherwise to the council.

History.

I.C., § 40-2403, as added by 1994, ch. 280, § 5, p. 867.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Prior Laws.

Former § 40-2403 was repealed. See Prior Laws, § 40-2401.

§ 40-2404. Council fiscal year — Annual report. — The fiscal year for the local highway technical assistance council shall be July 1 through June 30. On an annual basis, the council shall issue a report outlining its activities for the previous year, including a financial statement. Copies of the report shall be provided to the members of the transportation committees of the legislature.

History.

I.C., § 40-2404, as added by 1994, ch. 280, § 5, p. 867.

§ 40-2405. Fiscal audits. — The council shall perform fiscal audits in accordance with the provisions of [section 67-450B, Idaho Code](#).

History.

[I.C., § 40-2405](#), as added by 1994, ch. 280, § 5, p. 867.

Chapter 25
STATE HIGHWAY CONTRACTORS LICENSE TAX

Sec.

40-2501 — 40-2507. [Repealed.]

§ 40-2501 — 40-2507. License tax levied on contractors — Credit on income tax — Effect of nonpayment — Violations of act — Enforcement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1937, ch. 221, §§ 1 to 8, p. 395, were repealed by S.L. 1949, ch. 182, § 1.

Chapter 26

IDAHO TURNPIKE CONTROL

Sec.

40-2601 — 40-2622. [Repealed.]

§ 40-2601 — 40-2622. Turnpike projects — Turnpike control established — Powers — Bonds — Trust agreement and funds — Tolls — Expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1955, ch. 256, §§ 1 to 20, 22, 23, p. 569; am. 1970, ch. 133, § 4, p. 309; 1971, ch. 136, § 27, p. 522, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Chapter 27
COUNTY LOCAL OPTION SECONDARY HIGHWAY
REORGANIZATION ACT

Sec.

40-2701 — 40-2733. [Repealed.]

§ 40-2701 — 40-2706. Regulation of secondary highways — Policy — Organization of county highway districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1963, ch. 290, §§ 1 to 6, p. 757; am. 1971, ch. 45, § 1, p. 98; 1979, ch. 321, §§ 1, 2, p. 860; 1985, ch. 151, §§ 1, 2, p. 401, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-2707. Issuance of bonds prohibited. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1963, ch. 290, § 7, p. 757, was repealed by S.L. 1969, ch. 71, § 2.

§ 40-2708. Adjustment of district borders — Notice — Hearing — Decision — Appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1963, ch. 290, § 8, p. 757, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-2709. Authority and procedure for tax levies. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-2709, which comprised S.L. 1963, ch. 290, § 9, p. 757, was repealed by S.L. 1965, ch. 144, § 1.

Compiler's Notes.

This section, which comprised I.C., § 40-2709, as added by 1965, ch. 144, § 1, p. 280; am. 1967, ch. 71, § 1, p. 165; 1969, ch. 231, § 1, p. 738; 1978, ch. 183, § 1, p. 414, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-2710 — 40-2730. Apportionment of funds — Local option elections — Annexation of territory — Dissolution of districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1963, ch. 290, §§ 10 to 27, 30, 31 and 34, p. 757; am. 1971, ch. 113, § 1, p. 388; 1980, ch. 286, § 1, p. 755; 1985, ch. 151, § 3, p. 401, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

§ 40-2731 — 40-2733. Decennial county elections for new type of highway administration — Highway study commission — Meetings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1970, ch. 181, §§ 1 to 3, p. 528, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985.

Chapter 28
BEAUTIFICATION OF STATE HIGHWAYS

Sec.

40-2801 — 40-2860. [Repealed.]

**§ 40-2801, 40-2802. Authority of board — Acquisition of land.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1966 (2nd E.S.), ch. 5, §§ 1, 2, p. 16; am. 1974, ch. 12, §§ 47, 48, p. 61, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

Idaho Code § 40-2803—40-2809

§ 40-2803 — 40-2809. [Reserved.]

Idaho Code § 40-2810

**§ 40-2810. Legislative policy — Tourist related advertising devices.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 40-2810**, as added by 1977, ch. 210, § 1, p. 576, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

§ 40-2811 — 40-2829. Advertising near highways — Application of act — Licenses — Fees — General prohibitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1967, ch. 396, §§ 1 to 19, p. 1168; am. 1972, ch. 355, §§ 1 to 6, p. 1052; 1974, ch. 12, §§ 49, 50, p. 61; 1975, ch. 139, §§ 1 to 4, p. 312; 1977, ch. 210, § 2, p. 576; 1978, ch. 48, § 1, p. 90; 1978, ch. 49, § 1, p. 92, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

§ 40-2830. Removal of displays. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-2830, which comprised S.L. 1967, ch. 296, § 20, p. 1168; am. 1969, ch. 222, § 1, p. 728; 1972, ch. 355, § 7, p. 1052, was repealed by S.L. 1975, ch. 139, § 5.

Compiler's Notes.

This section, which comprised I.C., § 40-2830, as added by 1975, ch. 139, § 6, p. 312, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

§ 40-2831 — 40-2836. Compensation for removal — Information centers — Local ordinances — Nuisances — Enforcement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1967, ch. 396, §§ 21 to 26, p. 1168; am. 1972, ch. 355, § 8, p. 1052; 1974, ch. 12, § 51, p. 61; 1975, ch. 139, § 7, p. 312, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

§ 40-2837. Penalty. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 40-2837, which comprised S.L. 1967, ch. 396, § 27, p. 1168, was repealed by S.L. 1975, ch. 139, § 8.

Compiler's Notes.

This section, which comprised I.C., § 40-2837, as added by 1975, ch. 139, § 9, p. 312, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

§ 40-2838. Remedies cumulative. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 396, § 28, p. 1168, was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

Idaho Code § 40-2839—40-2850

§ 40-2839 — 40-2850. [Reserved.]

Idaho Code § 40-2851—40-2860

§ 40-2851 — 40-2860. Junkyards as public nuisances — Licenses — Fees — Violations — Rules and regulations. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1967, ch. 141, §§ 1 to 10, p. 320; am. 1974, ch. 12, §§ 52 to 60, p. 61, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

Chapter 29
HIGHWAY RELOCATION ASSISTANCE

Sec.

40-2901 — 40-2913. [Repealed.]

§ 40-2901 — 40-2913. Relocation aid and assistance for persons displaced by public programs. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1969, ch. 298, §§ 1 to 12, 14, p. 891; am. 1971, ch. 114, §§ 1 to 7, p. 389; 1972, ch. 154, §§ 1 to 10, p. 333; **I.C., § 40-2906A**, as added by 1978, ch. 313, § 1, p. 806, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-2001 et seq.

Chapter 30
COUNTY WIDE HIGHWAY DISTRICTS

Sec.

40-3001 — 40-3020. [Repealed.]

§ 40-3001 — 40-3016. Election to establish district — Appointment of commissioners — Powers and duties — Funding — Dissolution. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1971, ch. 273, §§ 1 to 16, p. 1081; am. 1972, ch. 26, §§ 1 to 5, p. 32; 1972, ch. 277, §§ 1, 2, p. 682; **I.C., § 40-3012A**, as added by 1972, ch. 277, § 3, p. 682; 1973, ch. 101, § 1, p. 171; 1973, ch. 256, § 1, p. 507; 1973, ch. 317, § 1, p. 678; 1979, ch. 252, § 1, p. 659; 1982, ch. 254, § 9, p. 646; 1983, ch. 158, §§ 5, 6, p. 436; 1984, ch. 198, § 1, p. 488, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1401 et seq.

§ 40-3017 — 40-3020. Creation of local improvement districts — Organization of board. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., §§ 40-3017 to 40-3020, as added by 1972, ch. 26, §§ 6 to 9, p. 32; am. 1973, ch. 317, § 2, p. 678; 1983, ch. 88, § 1, p. 183, were repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1401 et seq.

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